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U.S. ENVIRONMENTAL PROTECTION AGENCY'S WORKER PROTECTION STANDARDS FOR AG- RICULTURAL PESTICIDES

Y 4. AG 8/1:103-49

U.S. Environmental Protection Agency...

HEARING

BEFORE THE

SUBCOMMITTEE ON DEPARTMENT OPERATIONS

AND NUTRITION

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

NOVEMBER 10, 1993

Serial No. 103-49



Printed for the use of the Committee on Agriculture

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U.S. ENVIRONMENTAL PROTECTION AGENCY'S WORKER PROTECTION STANDARDS FOR AGRICULTURAL PESTICIDES

WEDNESDAY, NOVEMBER 10, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DEPARTMENT
OPERATIONS AND NUTRITION,
COMMITTEE ON AGRICULTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:30 a.m., in room 1302, Longworth House Office Building, Hon. Charles W. Stenholm (chairman of the subcommittee) presiding.

Present: Representatives English, Pomeroy, Smith of Oregon, Gunderson, Barrett, Boehner, Ewing, Kingston, and Canady.

Also present: Representative E (Kika) de la Garza, chairman of the committee.

Staff present: John E. Hogan, minority counsel; Dale Moore, minority legislative coordinator; Glenda L. Temple, clerk; Stan Ray, James A. Davis, Curt Mann, and Pete Thomson.

OPENING STATEMENT OF HON. CHARLES W. STENHOLM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. STENHOLM. The subcommittee will come to order. This morning our subcommittee in its continuing oversight role on the pesticide issues is interested in reviewing EPA's worker protection standards for agricultural pesticides. After determining that previous regulations were inadequate, the U.S. Environmental Protection Agency issued final regulations this summer governing the protection of employees and workers who handle or are otherwise exposed to pesticides.

A great deal of time and effort has gone into developing these standards over the years, but as indicated on today's witness list, there is clearly an active interest in ensuring that these regulations are administered in the most appropriate, rational, safe, and common sense manner possible.

In that regard, the subcommittee hearing will help shed light on this important issue and ensure that those with legitimate questions and concerns have an adequate opportunity and forum in which to air those concerns and hopefully have them addressed in a positive way.

I look forward to each and every one of your testimonies here today.

For our first witness, I call on the Honorable Esteban Edward Torres. We welcome you. Welcome to this subcommittee. We look forward to hearing your observations on this important subject.

STATEMENT OF HON. ESTEBAN EDWARD TORRES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, ACCOMPANIED BY FRAN McPOLAND, STAFF ASSISTANT

Mr. TORRES. Thank you, Mr. Chairman, members of the subcommittee, and the chairman of the full committee for inviting me to be here with you today. I am joined by my staff assistant, Fran McPoland, who has helped me tremendously in understanding these issues as they affect the process in Government, not that I need being taught or made to understand what the problems are in the field, because I have lived the situation.

I am here today not as a Member of Congress, but as the son and grandson of farmworkers. I spent my early days in the fields in Arizona and California. I am here to tell you that I know firsthand what the bottom line is and why workers need protection from chemical exposure.

I venture to say that no Member of Congress would want to be exposed to the levels of chemical risks that agricultural workers are exposed to every day. I come here today with a mission. And my mission is to convince you that the standards EPA has instituted, regarding worker exposure to pesticides, are not excessive. I want to underscore that. They are not excessive.

In fact they are less than the minimum standards that should be established. The EPA standards are ridiculously simple and give much less protection to workers than they are entitled to receive. So, what are we talking about? What are the standards that EPA has established?

One, EPA has established a period of time that workers are restricted from entering treated areas. The time interval ranges from 12 to 72 hours, depending on the toxicity. Does this seem excessive? Is this really a long time? Would you let your granddaughter, your children enter an orchard which has just been sprayed with a class I pesticide such as paraquat? Would you do that? One tablespoon, I understand if it comes in contact with your skin, will kill you.

Two, EPA has established a system to try to limit agricultural worker exposure to pesticides. We are not talking about some fancy equipment. We are talking about plain soap, water, and towels. Is that too much to ask? Is it too much to ask to notify workers through bilingual posters of what they might be exposed to? These pesticides cannot be treated lightly. They can cause cancer. They can harm an individual's reproductive system. And the posted notices would provide critical information so that medical workers can be informed in the event of an emergency.

Again, it just makes for common decency that employers would provide simple things like water, towels, and soap.

Three, EPA has established an educational system for the workers. Not only would they be given a 20-minute lecture on safety, but they might even be given access to the labels. So, what part of this program doesn't industry understand? What part do they

believe is too costly? Is it the poster that they are complaining about? Or maybe the towels? Simple towels, bars of soap?

Mr. Chairman, I am not trying to make light of a situation that has become very serious in our country. But sometimes I do get angry. The American farmworker has put up with injustice after injustice. As you well know, Mr. Chairman, America has one of the most abundant and cheapest food supplies in the world.

Do you think the people who help provide that food deserve decency? I do. I am sure you do. I am sure you have some regard, as we do, for their health. My very good friend who I grew up with and who championed this right, the late Cesar Chavez, dedicated his life to the hope that people who are central to our food delivery system would have similar protection as the people who eat the food. The Delaney clause of the Federal Food, Drug, and Cosmetic Act of 1958 specifies a cancer risk level of zero for food additives while those in the fields can't get these two-ply paper towels. I think that is shameful. The people in the fields are people providing the food on our tables and we want to see that they are healthy, that they are subjected to the same protections that anybody else in industry is subjected to.

Mr. Chairman, I thank you and the subcommittee for your kind attention on this matter. I will be happy to answer any questions you might have. If you don't, I would ask the chairman to excuse me. I have another hearing to attend.

[The prepared statement of Mr. Torres appears at the conclusion of the hearing.]

Mr. STENHOLM. Thank you very much for very good testimony. I doubt seriously that you will find any substantial, if any, differences with the frank way in which you ask the questions.

Mr. Chairman.

The CHAIRMAN. I thank you for the valuable information and I am sure that it will be helpful when we consider this.

Mr. TORRES. I thank the chairman of the full committee.

Mr. STENHOLM. Before I call the next witness, I recognize the chairman of the full committee, Mr. de la Garza.

OPENING STATEMENT OF HON. E (KIKI) de la GARZA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

The CHAIRMAN. Mr. Chairman, briefly, I think it is very timely that we have this debate. It has been almost a year from when the Environmental Protection Agency issued its final rule on the updated worker protection standards. And I know that there are concerns from the State departments of agriculture.

We just heard from one of the witnesses that expressed his personal experience in this area. I think it is fitting that the subcommittee hold this oversight hearing on the new standards and allowing for a public forum to hear from both supporters and complaints of the new order.

My personal feeling is that worker safety is and should be the prime factor in the debate. How to do it in an efficient manner considering cost and productivity, I think that is basically what we need to address Mr. Chairman.

And I welcome Dr. Goldman and all of the other witnesses.

Mr. STENHOLM. Mr. Smith.

Mr. SMITH of Oregon. Mr. Chairman, thank you. I have a statement that I will submit for the record.

[The prepared statement of Mr. Smith of Oregon follows:]

STATEMENT OF ROBERT F. SMITH
BEFORE THE
SUBCOMMITTEE ON DEPARTMENT OPERATIONS AND NUTRITION
NOVEMBER 10, 1993

Mr. Chairman, thank you for calling the hearing today to review the agriculture community's concerns with the implementation of the Environmental protection Agency's new Worker Protection Standards.

This Committee has always committed itself to the interests of all production agriculture. And, this Committee has always considered production agriculture in its broadest possible sense; from farm to table, as our Chairman often puts it. I think we can all agree that American agriculture wants to protect the health and safety of all who come in contact with pest control chemicals.

The EPA has issued and intends to implement regulations, the Worker Protection Standards, which seek to accomplish that goal. Today's hearing will provide valuable insight into how they expect these regulations to work, the concerns industry has about their impact and, I expect, some suggestions about how to improve upon them.

Earlier this year, we heard considerable alarm among the agriculture community about the potential adverse impact of these regulations. Many questions have been raised about the amount resources they will require, about the schedule of implementation and about how these would work on many specific operations. Some of these questions have been answered, many have not. I hope we are able to clear up a few more today.

As this Committee knows, I have consistently opposed increasingly burdensome regulatory measures, believing they create more problems than they resolve. I will examine today's testimony with a few questions in mind: 1) are the regulations simple and straightforward enough that they can be interpreted and implemented in our nation's multi-faceted agriculture community?, 2) are they unnecessarily costly or do they place excessive burdens on businessmen, farmers, farmworkers and other affected individuals?, and 3) does the public sector and the agriculture industry have the time and resources to implement these regulations in an effective manner?

Mr. Chairman, I believe today's hearing is a valuable exercise. I would also suggest that we have an opportunity, in the reauthorization of the Federal Insecticide, Fungicide and Rodenticide Act reauthorization, to correct any problems or deficiencies that turn up in this hearing.

I look forward to hearing the testimony of our witnesses and their responses to the Subcommittee's questions.

Mr. STENHOLM. Mr. Canady.

Mr. CANADY. Thank you, Mr. Chairman. I want to thank you for calling this hearing on this very important subject and I would like to submit a statement for the record also.

Mr. STENHOLM. Without objection. Any prepared statements received from members will be placed at this point in the record.

[The prepared statements of Mr. Roberts and Mr. Canady follow:]

Statement of Congressman Pat Roberts

Worker Protection Standard for Agricultural Pesticides

Department Operations and Nutrition Subcommittee

November 10, 1993

Thank you Chairman Stenholm and Mr. Smith for holding this hearing today. I look forward to the testimony of today's witnesses, particularly the Environmental Protection Agency (EPA), relative to the Worker Protection Standard for Agricultural Pesticides.

Although pesticide worker safety has been a concern of the Committee for years, the issue was brought to light most recently with EPA's publication of final regulations in the Federal Register in August of 1992. Since that time I have heard from many farmers, crop consultants and chemical retailers concerned about the practical effect of the regulation once implemented.

The majority of their concern center on the cost and difficulty of complying with the regulations, and what, if any, improvement in safety conditions, may be gained by the standard. My understanding is that the standard was developed to improve safety conditions for migrant and seasonal agricultural workers in labor-intensive production systems. While I understand the government's obligation to protect workers in these situations, I have concerns about whether the standard is flexible enough to be workable in the very different world of High Plains agriculture.

The agricultural production that I represent is spread across big country. It is not uncommon to have agricultural operations with thousands of acres that span several counties. This type of agriculture is highly mechanized and relies on extensive crop scouting and quick

treatment for specific pest control problems. Such conditions present unique problems when it comes to field posting, notification, re-entry intervals and decontamination. There is also concern that implementation of the standard may hinder producers efforts to use Integrated Pest Management (IPM) techniques.

I am certain today's witnesses representing independent crop consultants and crop protection retailers, as well as representatives of the State Departments of Agriculture--who, in most cases, will be the state entity charged with implementing and enforcement of the standard--will highlight the details of these concerns for all of our benefit.

Finally, I want to thank the EPA for their willingness to work with agricultural producers and industry to make implementation of the standard as workable as possible. EPA has moved quickly to address many of the original concerns about the standard. We look forward to their continued cooperation on this important issue.

CHARLES T. CANADY
12TH DISTRICT, FLORIDA

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THE HONORABLE CHARLES T. CANADY
of Florida

before the
SUBCOMMITTEE ON DEPARTMENT OPERATIONS AND NUTRITION

November 10, 1993

Thank you, Mr. Chairman. I commend you for calling this hearing to address the implementation of the new Worker Protection Standards established by the Environmental Protection Agency. Given Florida's labor intensive agricultural industry, it is imperative that EPA's regulations provide the necessary protection to agriculture workers. However, these regulations must not reverse the progress and success that the Florida industry has had in Integrated Pest Management (IPM) practices. If the notification and scheduling burdens under these regulations become a disincentive to IPM practices and a discouragement to using "reduced-risk" pesticides, then the industry will be forced to move back to regularly scheduled applications of broader-spectrum pesticides. This is a result exactly opposite the goal of the Administration's most recent proposal regarding agriculture chemical use.

The fruit, vegetable, nursery and greenhouse operations that are a major part of Florida's agriculture industry, are hand labor intensive. These extremely diverse industries often produce several different plant varieties on the same farm. This type of operation requires the producer to carefully monitor and plan his pesticide application schedule to address the specific needs of each plant variety. Therein lies the potential for significant problems under the notification requirements and reentry intervals proposed in the new standards.

EPA should be applauded for opening the training regulation process to input from all interested parties. It is important for the people who have to institute these new regulations to be involved in the implementing process. One concern I must express is that EPA published the worker protection standards a year and a half ago and the industry still does not have the necessary training material in order to bring the producers into compliance by April 15, 1994. The first worker training program is scheduled for December which is going to make it extremely difficult to have a trained workforce in the field by the April deadline.

Mr. Chairman, I encourage the EPA to continue to work with the agriculture community to realize the goals of the worker protection standards. But we do not need to take a step backward in the industry's use of new IPM programs and reduced risk pesticides. I look forward to hearing from today's witnesses on this subject and to working with the EPA and interested parties on this issue in order to institute meaningful worker protection standards.

Mr. STENHOLM. We look forward to hearing from Dr. Lynn Goldman, the Assistant Administrator for Office of Prevention, Pesticides and Toxic Substances.

Ms. GOLDMAN. Good morning. I would like to insert my written testimony in the record.

Mr. STENHOLM. Each and every statement submitted will be entered into the record and we will appreciate very much your summaries.

STATEMENT OF LYNN GOLDMAN, ASSISTANT ADMINISTRATOR, OFFICE OF PREVENTION, PESTICIDES AND TOXIC SUBSTANCES, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. GOLDMAN. I am Lynn Goldman, Assistant Administrator for EPA's Office of Prevention, Pesticides and Toxic Substances. And as a new appointee, I am happy to have the opportunity to come here today to discuss efforts that I will be overseeing to protect agricultural workers from the adverse health effects of pesticides.

I will discuss the recently revised National Worker Protection Standard and how we plan to implement it, I will also discuss plans by the U.S. EPA to consider strengthening the standard in some areas, and finally, I will address the need for pesticide reform litigation to address concerns about pesticide risks.

Millions of workers who are exposed to pesticide chemicals are at a risk of suffering either direct or accidental exposure to pesticides every year. These people include hired workers, owners and operators of agricultural establishments, and members of their families. They work on farms, forests, nurseries, and greenhouses. They are also pesticide handlers who mix and load pesticides.

Physicians annually diagnose an estimated 20,000 acute pesticide poisoning accidents in the United States, but available evidence indicates that these illnesses often go unrecognized and even when recognized are unreported. And actually pesticide poisonings are only reported in eight States at this time.

Toxicological studies indicate that cancer, developmental, reproductive, neurotoxic, and other effects may threaten agricultural workers and even their children. The economic burden to society from pesticide-related illness in farmworkers is substantial, yet these illnesses are completely preventable.

Later this morning we will hear a firsthand account of a personal poisoning incident that should have been avoided if our worker protection rules had been in place at that time. Implementation of the worker protection standard will reduce medical expenditures and reduce lost work time.

The U.S. Department of Labor has reported that agricultural workers suffer the highest rate of chemical-related illness of any occupational group four times greater than the next highest industry. The protections provided to our agricultural workers by the new worker protection standard are long overdue.

Chemical pesticides have been used in this country since the 1950's and it wasn't until 1974 that any standard for protection of workers was put in place. This standard, the 1974 standard, is not enforceable and covers only workers on farms. Pesticide poisoning of workers continues to occur at high rates to this day.

Meanwhile, the use of the more acutely toxic phosphate pesticides has increased.

In 1983, EPA began to work on a new standard that would have clearer responsibilities than the 1974 standard and then regulatory negotiations were initiated in 1985. And most of you are aware that these negotiations were unsuccessful.

EPA proposed a worker protection standard in 1988 and 4 years later a final rule. During this long period of developing a rule, EPA did receive input from all parties and did attempt to address all of their concerns. The worker protection standard will require changing the way that American agriculture operates, changes that are long overdue and represent real progress.

However, already shortcomings are apparent, which the EPA is considering addressing.

The revised worker protection standard became final in August 1992 and will go into effect for the most part in the spring of 1994. Flexibility is built in to ensure that employers can adapt the standard to their unique circumstances, such as nursery work, integrated pest management activities, and other unusual circumstances.

But effective implementation will require the participation of all involved, the EPA, agricultural employers, States, and registrants. The EPA has taken a number of steps to ensure that each preparer will be able to carry out the new requirements.

And this activity actually began in 1990 in terms of laying the groundwork for these efforts. Because of the complexities of implementation, the EPA has undertaken the most extensive pesticide outreach ever and provided more than \$16 million to States over 4 years.

We are conducting workshops and developing and distributing training materials to the agricultural employers and workers to pesticide handlers and State enforcement inspectors. Let me tell you a little bit about some of the specifics that are in the worker protection standard.

The rule prohibits spraying of the pesticide while anyone is in the field and restrictions on entry in treated areas. The rule also requires agricultural employers to provide to the workers and pesticide handlers a number of common sense protections, information about pesticide application, basic pesticide safety training, decontamination supplies for use in case of exposure, emergency transportation when needed, and clean protective equipment for use of employees.

Under FIFRA, EPA does not have the authority to direct the enforcement regulations which is why EPA must require 650 registrants for label changes on products as of October 23, 1995. EPA does not intend to allow this deadline to slip because after 10 years of work, there can be no delay in protecting workers who have for so long been without these critical protections.

EPA has done a cost benefit analysis on the new standard. We estimate that the incremental cost of the final rule will be about \$95 million in the first year and about \$50 million annually thereafter. The benefit estimates that the EPA calculated are modest in that EPA looked only at the known universe of pesticide-related illness, including avoiding an estimated 80 percent of the physician-

diagnosed acute illnesses, and 300 hospitalizations due to pesticide poisoning illnesses as well as a number of chronic and other illnesses.

When using modest assumptions about benefits, we believe that the protections afforded by the rule are well worth the cost.

The EPA has committed itself to strengthen the worker protection standards where needed and in a particular area that we are considering strengthening the standard is the grace period for the 30-minute training that the workers receive at this point in time in the rule once every 5 years.

Currently agricultural workers may work for 15 days for each establishment before training is required. This grace period does not apply to pesticide handlers or workers in the field. But we feel that there is a case to be made that 15 days is too long and perhaps should be eliminated.

I would now like to mention the administration's pesticide reform proposal. Many of the changes that we have proposed would directly benefit agricultural workers. First, use of safer pesticide products will benefit agricultural workers who come into contact with pesticides on the job.

Second, reforming cancellation and suspension procedures will protect workers by allowing EPA to act more expeditiously to reduce the risk of the pesticide. Third, our label call-in proposal will enable EPA to act quickly to make label changes and giving the EPA the ability to enforce our regulations under FIFRA, we would no longer need to make onerous label changes every time there is a new regulation. These will protect those that work with pesticides as part of their jobs.

This administration is committed to making the 1990's a period of significant change in pesticide use and regulation. We are developing new partnerships between the EPA, the USDA, and farmers to achieve pesticide use and reduction, and undertake new efforts to improve worker safety. Never has public concern to risks to human health resulting from the risk of pesticide been greater.

That is justified for the 4 million agricultural workers who are the people at great risk from occupational exposure to pesticides. These workers deserve the benefit of our modern knowledge of the risks they may encounter in the places they earn their livelihood and of techniques for minimizing risks.

We can be proud that we strive to give all persons the basic information and help in using it that each of us, were to trade places with them, would require it.

Thank you for your attention. I would be pleased to answer any questions that you may have.

[The prepared statement of Ms. Goldman appears at the conclusion of the hearing.]

Mr. STENHOLM. Thank you, Dr. Goldman.

One of the most controversial areas right now dealing with Federal-State reactions and interactions is that many of our State and local governments are saying that we are creating too many mandates and providing too few funds to carry out that which we are doing at a Federal level.

We will hear from some of our State commissioners of agriculture, secretaries of agriculture, who charge that they don't have

the resources to carry out these rules, regulations, and instructions, in the way in which they are instructed.

How would you respond to that question?

Ms. GOLDMAN. I believe that the EPA has made a greater effort to provide to the States funding for this activity to the maximum extent possible, which has amounted to \$4 million to \$5 million a year for the implementation and enforcement plan for fiscal year 1990, 2 years prior to the issuance of the rule.

The agency has also put a lot of effort into not only providing training, but also the materials that the States need to use to do the outreach, not only the registrants, but also the agricultural establishments that need to be a part of this which then obviates the need for the States themselves to produce the materials.

So I believe that the agency has made every effort that it could, given the resource base that we have to work with, to ease this transition for the States and to provide the States with money.

Mr. STENHOLM. What if on a closer look that you determined that they are right and that you are wrong; that the mandates that you have made could not—under good business arrangements—be logically carried out without substantial additional investments by our various States to carry out some of the proposals; that they could be done with better worker protection than the mandate you have suggested with the funds for them to do so?

Ms. GOLDMAN. It is my personal belief that for these kinds of public health activities, that we never have the resource base that we need to do the kind of job, that in the ideal world we would do.

We are always forced to set priorities for the amount of effort that we can put into these activities to a greater extent that we are comfortable with. And so I would be quite open to hearing from States that they would like to do more, and that they would like to do a better job in these areas.

Mr. STENHOLM. And perhaps do it differently?

Ms. GOLDMAN. Perhaps do it differently. I think what we have attempted to do is provide a framework that is really a very cost-effective approach and hits on the most important issues that need to be handled first.

And I don't think that is at all to say that there isn't more that Government could be doing in this area.

Mr. STENHOLM. No one could argue with that, but I guess the question that is going to be raised over and over concerning not only the testimony today, but also the future legislation on FIFRA and the Delaney clause and the other questions that this committee is going to be addressing, both jointly and with other committees and individually, the statement is often made, perhaps over-worked, but I don't think so, and that is whatever decisions we make, whatever mandates that we make should be based upon the best science available, not on personal opinions but on the best science available.

How do you react to that statement?

Ms. GOLDMAN. I would agree with that fully, and I think that a lot of study went into the development of these standards in terms of really what we are trying to do is prevent exposure.

And every single action required by the standard is to limit or eliminate exposure to then prevent illnesses, both acute and chronic over time.

Mr. STENHOLM. To people?

Ms. GOLDMAN. To people. To the farmworkers.

Mr. STENHOLM. And to animals and everyone else affected by these pesticides. The final question. Can you shed any light on when we may expect to see legislative language as to the administration's FIFRA proposals; when we might be able to sit down and begin to work through it?

Ms. GOLDMAN. We are drafting furiously away. I am sure you are aware, along with your staff, the legislative counsel, we are hoping to have language by the close of this session. That is what we are pushing toward.

There is an awful lot of work that is involved in getting our proposals done in black and white. That is our target at this point in time.

Mr. STENHOLM. We certainly are looking forward to that. And I realize the time restraint is a difficulty for all of us, and I hope that we will have the language upon the conclusion of this legislative session so that this committee and our staffs working with you and others might be able to spend some very productive time in late November, early December and into January preparing this committee for a very heavy workload early next year.

Ms. GOLDMAN. We are looking forward to doing that.

Mr. STENHOLM. Thank you for being with us.

Mr. Smith.

Mr. SMITH of Oregon. Dr. Goldman, as you know, many State departments of agriculture are going to testify today. Their basic message, as I understand it, will be that the promulgation of these rules and regulations are confusing, burdensome, and costly.

They are going to ask for a delay in the implementation until October of 1995. Do you oppose that?

Ms. GOLDMAN. At this point in time, the agency believes that the issues that are being raised can be worked out within the implementation time line that has been laid out. And we are willing to work very closely with the State agricultural commissioners on really getting around the table and hashing out with them what those issues are and how we can help.

But we really do not want to delay the implementation any further, given how long overdue these implementations are. Another thing that is going on that I think is going to create a lot of confusion is that companies are already beginning to change the labels and, as you know, the enforcement under FIFRA hinges on what is on the label.

I think that as the labels are changed and we hit the deadlines for label changes, that the States need to be on board, otherwise the farmers are going to be in a very confusing situation.

Mr. SMITH of Oregon. I think that is the question. If in the plan—I don't think—but if the plan results in displacement and difficulty at the State level, they can't reach your time lines, then the credibility of the whole program is at stake, it seems to me.

Ms. GOLDMAN. I would agree with that, and I think that is why our first line of attack for this really has to be to work together to

try to resolve the differences and the questions that are out there, and, make this a doable project, and if it turns out at the end of the day that it is not doable, maybe we need to reconsider that, but I just don't think that we have tried hard enough to work out these differences, and that these differences are so insurmountable that we can't work them out within this timeframe.

Mr. SMITH of Oregon. What is the penalty if the State of Texas said, sorry, I can't do it, I am not going to implement it?

Ms. GOLDMAN. Hopefully, we don't reach that juncture with them.

Mr. SMITH of Oregon. I know, but what happens if they say we can't make it?

Ms. GOLDMAN. I think if they really can't make it, then we have to work something out with them. But again, I have yet to be convinced that the issues that have been raised are insurmountable within the timeframe we are trying to meet.

Mr. SMITH of Oregon. Is there a penalty that the Federal Government can issue to a State that does comply on a deadline basis?

Ms. GOLDMAN. The one issue would be about the delegation of the enforcement responsibilities. But, again, I don't think that we would allow things to reach that point.

We would certainly be in touch with them and work something out with them prior to the time we reached a point like that.

Mr. SMITH of Oregon. Mr. Andrews from Oregon is here. He runs the agriculture department of Oregon, we could send him to jail if he doesn't comply, couldn't we?

Ms. GOLDMAN. I am not sure about that. I don't believe that is the case. I believe that rather than that happening, possibly it would end up that the EPA would have to step in in terms of a delegation of the EPA's enforcement authority.

But, again, we would do everything that we could, short of doing that, and hopefully well before we ever reach that point.

Mr. SMITH of Oregon [assuming chair]. Any questions?

Mr. CANADY.

Mr. CANADY. Thank you. I don't have questions now because of the time factor, but I may have some written questions that I would like to submit to you and I would appreciate your written response to my office.

Ms. GOLDMAN. I would be glad to answer them.

Mr. SMITH of Oregon. Thank you very much Dr. Goldman. We welcome the next panel, the State departments of agriculture from the various States, Mr. Perry, Mr. Voss, Mr. Kelly, Mr. Dailey, Mr. Horn, and Mr. Odom.

I might explain that some of the members are going to vote, and we will continue the hearing, if you don't mind, and we will kind of substitute as they get back, others will leave. I am sorry it is disruptive, but it is the only way we conduct business here.

Mr. Perry.

STATEMENT OF RICK PERRY, COMMISSIONER, TEXAS DEPARTMENT OF AGRICULTURE, AND CHAIRMAN, WORKER PROTECTION TASK FORCE, NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE

Mr. PERRY. Thank you, Mr. Chairman, and members of the sub-committee. I commend you for recognizing the impact EPA's newly enacted worker protection standards will have on American agriculture and regulatory agencies in each State.

As agriculture commissioner for the State of Texas, I am proud to appear here today on behalf of the National Association of State Departments of Agriculture, a nonprofit association of public officials representing the commissioners, secretaries, directors of agriculture in the 50 States and the territories of American Samoa, Guam, Puerto Rico, and the Virgin Islands.

It is imperative that the views of NASDA are presented today because under a cooperative agreement with the EPA, the State departments of agriculture serve as the lead State regulatory agency in each State.

At this time I would like to submit my full statement for the record and give a brief synopsis of my concerns.

Mr. SMITH of Oregon. Without objection.

Mr. PERRY. We hope to demonstrate the need for delay of the implementation of the compliance provisions of the worker protection standards, and second, we want to encourage a dialog between EPA and agriculture to resolve numerous concerns on vital issues that directly affect our Nation's food and fiber industry.

NASDA supports the concepts embodied in the worker protection standards regulations—but we have questions. At this time, I would like to submit the NASDA action policy regarding WPS.

Mr. SMITH of Oregon. Without objection.

Mr. PERRY. American agriculture currently wants to protect farmworkers and anyone who handles pesticides from unreasonable risks of pesticide exposure. This is a legitimate concern, but this policy should be implemented in a way that is reasonable to all. That means regulations that can be easily interpreted by regulators and the regulated community, regulations that are not excessively costly and regulations that don't unnecessarily hinder a business' ability to operate and prosper. Unfortunately, the WPS regulations fail these standards on all counts.

Questions raised by many States concerning implementation of the regulation are only the tip of the iceberg when it comes to the problems associated with this Federal policy. A list of 272 questions have been submitted to the EPA's interpretive guidance work group, but to date, only 35 questions, less than 15 percent, have been successfully answered.

I would like to submit those questions for the record.

Mr. SMITH of Oregon. Without objection.

Mr. PERRY. In fact the answer to one question caused a significant change in EPA's "How To Comply" manual, one can only wonder what other significant changes the remaining 271 questions will create.

States are being put in the position of utilizing large amounts of time and resources to defend shaky compliance issues at a time

when effective utilization of limited resources will determine the future of State compliance initiatives.

States are expected to enforce WPS provisions before the EPA can answer many significant questions. EPA was also late in developing and disseminating its "How to Comply" manual to the States. Texas received 120 copies of this 141-page publication just a few weeks ago, 120 copies, meant for the 180,000 certified pesticide applicators in our state.

In less than 6 months before the Federal enforcement measures are initiated, we must print and disseminate the publication and provide outreach and educational services so these regulations can be understood.

Please understand, we are trying to do our best, but the timing just won't work if we expect to have uniform compliance of these new standards. If EPA's current implementation schedule is not altered, I can assure you that our inspectors will end up knocking on the doors of farmers who have not heard of these regulations, let alone started complying with them.

EPA has not produced the training manual that employers must use to educate their workers about worker protection standards. EPA has also greatly underfunded the State lead agencies responsible for education and enforcement. The Texas Department of Agriculture will receive only \$92,000 to implement and monitor the revised worker protection standards. This is approximately 50 cents for each of the 180,000 certified pesticide applicators in Texas. With that 50 cents we are supposed to provide training, develop an outreach program, reproduce training or informational materials, and provide reports on all of our activities.

I can guarantee that there will not be significant funds available to adequately educate and train those in Texas impacted by the regulations. The State, serving as the regulator for the Federal Government, cannot do an adequate job with the funding available, particularly with EPA's current implementation schedule factored into the equation.

Concerns my colleagues and I are raising today should not surprise the EPA. States have already outlined these issues to the EPA as did USDA staff. After the rule was published, USDA published its list of concerns in the Federal Register which I would like to submit for the record, Mr. Chairman.

Mr. STENHOLM. Without objection.

Mr. PERRY. In addition NASDA does not come to this hearing on a whim or without a lack of knowledge. We know that Federal bureaucrats in dozens of Federal agencies in Washington will continue to churn out new regulations, but that doesn't mean those new regulations have to be cumbersome, confusing, and financially prohibitive.

This is an opportunity to make the system work a little bit better. Until yesterday, I might add, EPA has stonewalled our efforts to be involved in this process. I hope that when this hearing is concluded Agriculture, the EPA, and State regulatory agencies can sit down and work out a reasonable solution to the problems that will be outlined this morning.

NASDA recommends that enforcement of the WPS be delayed until October 23, 1995, when full implementation of the regulations

begin. We believe that in the interim, training and educational activities can be enhanced and we would propose that States conduct enforcement monitor activities to assist producers in preparing for full implementation of the standard.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Perry appears at the conclusion of the hearing.]

Mr. STENHOLM. Thank you.

And let me apologize to my neighbor for not being here to properly introduce the gentleman from Texas. He carries a little longer title of commissioner of Texas Department of Agriculture, but it has been my pleasure to welcome my neighbor to this subcommittee.

Next we will hear from the Honorable Henry J. Voss, director of the California Department of Food and Agriculture.

STATEMENT OF HENRY J. VOSS, DIRECTOR, CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

Mr. VOSS. Mr. Chairman, my name is Henry Voss, and I am the director of the California Department of Food and Agriculture. I am here to discuss the concerns that I share with members of the agricultural industry of California about the Federal worker protection standard.

While we strongly support a safe occupational environment for farmworkers, pesticide handlers, and growers, it is unclear that some of the new provisions would provide any significant additional protection from pesticides.

Further, surveys of growers and a study by the University of California have shown that these standards will have serious economic impacts, including supply fluctuations for various commodities, increased grower costs, and increased prices to the consumer. A copy of the study is attached to my testimony.

These adverse effects will be hard felt in California due to the unique conditions found in the State. Unlike some areas of the country where crop production is less diverse, California produces a broad variety of minor crops, often grown simultaneously by a single farm operation on adjacent or scattered small fields.

California farming relies on irrigation, and that irrigation requires timely entry into the fields to set and maintain pipe and sprinkler systems. These activities will be nearly impossible due to new restrictions on activities performed during restricted reentry intervals.

California also has an effective State worker safety program already in place, which the new rules will complicate unnecessarily.

California's pesticide regulatory program began in 1911, when the first State law regulating pesticide product quality was passed, a year after the passage of similar Federal legislation. In the 80 years since the beginning, a body of State law has grown to cover all aspects of sales, possession, and use of pesticides in California.

Many of these laws are unique to California. They include statutes mandating protection of air, surface and groundwater, regulations governing pesticide use reporting and use enforcement, and programs to develop alternatives to pesticides and to guard worker health and safety.

For over 20 years, California has had an aggressive worker protection program to protect field and other workers who may be exposed to pesticides during the conduct of their work. This program specifies work practices for employees who mix, load, apply, store, transport, or otherwise handle pesticides, as well as workers exposed to the residues on treated plants.

In comparison to this program, the new Federal worker protection standards does not provide significantly better protection in California. It does, however, hamstring the grower by imposing burdensome and unworkable requirements on standard agricultural practices in our State. For example, the Federal standards will severely restrict the activities of workers who need to enter certain pesticide-treated areas to set irrigation equipment and irrigate crops during the restricted entry interval.

Current California regulations, and many pesticide labels, allow entry into a treated field once the sprays have dried or the dust has settled. Irrigation workers wearing appropriate protective clothing can enter a treated area to set irrigation equipment, if there will be no significant contact with the treated foliage.

The new Federal standard prohibits entry for the first 4 hours after treatment and then restricts access to a maximum of 1 hour per worker in any 24-hour period. This time limitation will place tremendous hardship on growers' abilities to provide adequate water to their crops. This particular restriction will not merely inconvenience the grower, but results in significant economic impacts on consumers.

The California Department of Food and Agriculture, in cooperation with the University of California at Berkeley, prepared an assessment of these potential impacts to production agriculture in California. After examining only four crop/chemical combinations where irrigation is necessary immediately following pesticide application, that study found that consumers would pay \$230 million more for lettuce, broccoli, cauliflower and celery. Don't forget that California produces 70 to 90 percent of these crops for the Nation.

We use as an example herbicide application. I learned this morning that that is no longer a problem in that the EPA has determined that an irrigator laying pipe after herbicide application will be considered a pesticide handler, and that will impact the \$230 million, and we would like to later submit a correction to that and what we estimate what that cost is.

Our report was produced prior to EPA certification. I have to reiterate that we are dealing essentially with crops, hot weather, and limited water. Lettuce is especially vulnerable when the head is forming, not being able to irrigate during a 3-day period can cause crop loss.

As mentioned, California already has a sound worker protection program in place with standards above most other States. Imagine the negative economic impact this new Federal regulation will have to States who will be required to make more significant adjustments than California.

In summary, agricultural practices in California are unique. We have one of the most diversified cropping systems in the world with over 250 crops, many of which are only grown in our State. We supply the Nation with an abundance of vegetables year-round

grown in a variety of climatic conditions, but largely dependent on irrigation.

California is also unique in having 80 years of experience with one of the most restrictive pesticide regulatory programs in the world. A program that emphasizes safe use of pesticides by farmworkers and investigates every reported case of pesticide illness.

Over the last 20 years, growers have been required to adopt more and more safeguards at a considerable cost. The costs of our State regulatory program is over \$44 million, but this does not include the cost of implementing those regulations, and the cost of decreased competitiveness when growers are denied access to products used elsewhere in the Nation. That cost is estimated to be two to three times the regulatory cost.

I believe that we have done a fine job of protecting the environment, the public, and the worker from the adverse effects of pesticides, and I believe that we have developed the field experience to determine whether improvements are going to help pesticide safety.

And it is, at best, unclear that the new Federal regulations will provide any significant additional protection from pesticides in our State.

Finally, in support of the NASDA position, I would point out that the worker safety program in California has evolved slowly over the last 20 years with input from farmworkers and growers and with plenty of time to test what measures are both realistic to implement and beneficial to the worker.

The EPA's proposal to move the entire Nation to where we are and beyond in 1 year is badly conceived, costly, and unrealistic. While we support and applaud efforts to protect the farmworker, we believe that the EPA should slow down their implementation of the new standards, while emphasizing those changes that will provide the most immediate relief from unsafe conditions.

I, therefore, support the time line suggested today by Texas Commissioner Rick Perry. Further, we feel that EPA must take into account differences in regional farming practices, either by reopening the rule to permit changes in some of the least workable requirements, or by allowing States maximum flexibility in their enforcement of the standards, so that the goal of protecting the farmworker can be met without creating unanticipated costs.

Thank you.

[The prepared statement of Mr. Voss appears at the conclusion of the hearing.]

Mr. STENHOLM. Thank you.

Next, Mr. Kelly.

STATEMENT OF KEITH KELLY, DIRECTOR, ARIZONA DEPARTMENT OF AGRICULTURE

Mr. KELLY. Thank you. Mr. Chairman. I am Keith Kelly, director of the Arizona Department of Agriculture. We in Arizona support your efforts in holding this hearing.

Arizona is a State with an existing pesticide worker safety program that affords protections to workers without excessive burdens on industry, but we feel that there is some merit to the new Fed-

eral worker protection standard but there are several concerns that we have.

Today, I want to specifically focus my concerns on the restricted entry interval, REI, required in the regulations. This requirement, which will conflict with Arizona's very successful program, and will have a significant impact on irrigation production practices and will have an adverse impact on farmworkers in my State. The regulation prohibits hand labor cultural activities during an REI. Any other activity, such as irrigation or machinery operation is limited to 1 hour per employee during a 24-hour period. The REI would be from 12 hours to 3 days depending on the toxicity of the pesticide ingredient and the average rainfall. Entry during the first 4 hours is limited to applicators and crop advisors wearing all required personal protective equipment.

The prohibition of routine early reentry for short-term tasks with no hand labor for no more than 1 hour in a 24-hour period will impact several facets of Arizona production agriculture. The production of crops is entirely dependent on irrigation, and crop losses or yield reductions will result if irrigation timing is not strictly adhered to. Further complicating this problem is the fact that much of our cropland is irrigated via "project" or irrigation district water. In other words, when you schedule the water, that is the time you receive it, and if you don't, you go back in the line and you have to reschedule and wait for your time to come again.

There are basically two types of irrigation used in Arizona—flood irrigation and sprinkler irrigation. Farmers use both of these types depending on the needs of the particular crop and time of the year. It is quite possible to have an irrigator perform work in the treated area for longer than 1 hour in a 24-hour period because sprinkler pipes break or shovel work needs to be done during irrigation. Most of the time irrigators normally do not enter the vegetative portion of the field, but instead remain on the canal banks, tail ditches, and headlands.

Pesticide applications and the irrigation of fields are two operations that frequently overlap, especially in the warm months of September and October. And I am talking about warm months of 100-degree days. If the furrows are full of water, certain pests will not be able to hide there; and the irrigation helps to obtain better pest control. When pesticide applications and irrigations cannot be properly coordinated, the result will be yield reductions due to insect pressure or lack of water which will require additional pesticide applications adding not only to production costs, but also increasing the likelihood for occupational exposure and environmental hazards. Just the opposite of what we are trying to do. If irrigations are delayed for 3 days because irrigators cannot enter the field, the entire field will be jeopardized from a cultural standpoint. Proper timing of irrigation water as well as fertilizer application is extremely important to bring the crop to its maximum yield potential while preserving quality. To complicate matters, there is a provision in the standard that extends REI's from 48 to 72 hours in those areas that receive less than 25 inches of rainfall per year, thus increasing our concern for dealing with mechanics of irrigating crops in Arizona.

In contrast to the new Federal regulation, Arizona's existing State rule, adopted in 1989, permits "no contact" early reentry specifically for irrigating and operating tractors and other machinery, provided that "suitable protection such as chemical resistant boots and gloves" are used. Our experience in administering this rule has disclosed no exposure incidents related to these workers entering treated areas before the REI has expired either through our enforcement programs or through the Arizona Department of Health Services, pesticide related illness surveillance program. Additionally, the collective experience of Arizona farmers indicate that at least for the past 15 years, they have never known of a problem with an irrigator experiencing a pesticide related illness. Arizona requires, by statute, the medical profession to report all pesticide related illnesses to the State.

Frost protection may be a similar issue, although it may fall under the Federal WPS agricultural emergency exemption that is not offered under the REI as for irrigation short-term entry.

As the REI standard now exists, as a regulatory agency charged with enforcing this provision we believe this restriction is totally unenforceable. How can our field staff document the amount of time hundreds if not thousands of fieldworkers might spend irrigating crops under an REI? In the case of a complaint from a worker, documentation for prosecution of an employer will be nearly impossible as it is going to end up being one person's word against another's.

Our industry will have four options: The first option is to hire more workers, but I must caution you they will end up being seasonal part-time workers. Are there enough additional, skilled, part-time workers available? Probably not as employees who are limited to a few hours work are difficult to employ. Smaller operations may not be able to expand their workforce to meet these irrigation schedules. Some farmers feel that to comply with this requirement they would have to schedule 24 irrigators for each treated and irrigated field to ensure compliance.

The second option is to plant winter vegetables later in the year during cooler fall months in order to reduce irrigation and pest control applications. This would lead to nationwide shortages of lettuce, broccoli, and cauliflower. The Nation's supply of winter lettuce overwhelmingly originates in Arizona.

A third option is to abandon closely timed irrigations and ground applications in favor of aerial applications. This results in increased pesticide usage due to decreased effectiveness of the pesticide application at a time when the administration and agricultural industry is moving toward reduced and more effective use. These extra pesticide applications may actually increase worker exposure to residues, increase the potential for pesticide drift to nontarget areas, and exacerbate some of the issues associated with the ag-urban interface in Arizona.

This point raises another concern that State agricultural officials have with the new WPS. The standard will encourage agricultural producers to move away from integrated pest management, IPM, practices due to these unworkable WPS regulations at a time when efforts are being made to increase IPM practices. The administration proposal for pesticide regulation reform calls for a joint EPA-

USDA chaired effort to, within 1 year, develop commodity-specific pesticide use reduction goals. This is a prime example of the left hand bureaucracy developing conflicting regulations with the goals and policy of the right hand.

The fourth option, do not comply with the standard. Growers may have to choose between violating the regulation or losing crops and going out of business. In this scenario, both industry and workers lose, and regulators will lose credibility with workers, industry, and the general public.

There must be exemptions in the WPS for early entry into treated areas where workers will not come into significant contact with plant surfaces. Arizona's experience demonstrates a level of protective equipment could be prescribed to prevent contact with plant, soil or water surfaces similar to our procedures of requiring the use of chemical resistant boots and gloves to irrigate crops under an REI.

If EPA delays the enforcement aspect of the standard, the States and the agency would have an opportunity to solve the problem areas of the regulations, issues which, to date, EPA has failed to address or even discuss. It is absolutely essential that EPA work with the States to solve these very serious problems. I, for one, am not willing to sacrifice good worker protection simply to please the whims of a Federal regulation, which at best is unclear as to whether it will provide any additional protection to workers from pesticides; and, in fact, may lessen the protective measure already in place in Arizona. I would rather walk away from EPA's Federal pesticide regulatory program than create an atmosphere of confrontation which damages the economic viability of Arizona's agriculture and decreases worker protection.

Thank you, Mr. Chairman, for this opportunity to share Arizona's concern regarding this new Federal regulation.

[The prepared statement of Mr. Kelly appears at the conclusion of the hearing.]

MR. STENHOLM. Next we will hear from Mr. Daily.

**STATEMENT OF FRED L. DAILEY, DIRECTOR, OHIO
DEPARTMENT OF AGRICULTURE**

MR. DAILEY. I am Fred Dailey, director of the Ohio Department of Agriculture. I thank the subcommittee for investigating the effects that this new regulation will have to American agriculture and the State regulating agencies.

The EPA revised worker protection standard is the culmination of a painstaking series of public comment periods and negotiations taking 9 years to complete. This product is broad in its scope and lengthy in detail. It is not simple.

The many groups with an interest in this issue continue to spar with regulatory agencies over the implementation process. It is the State lead pesticide agencies, such as the Ohio Department of Agriculture, that are now moving to the forefront of the communication and enforcement process as we approach the first critical deadlines for implementation.

As the State lead agencies move ahead, the loudest reactions are already being heard from farmers and other affected employers who believe that key portions of the WPS place an unfair or unbal-

anced hardship on their business. Criticism of EPA's revisions of WPS has not abated in spite of finalization of the agency's new rules.

Labor groups are dissatisfied with the training requirements, field posting, and other provisions. Pesticide registrants have been critical of insufficient time lines for review and distribution of the revised pesticide labels. Pesticide user advocates cite the overall complexity in the rule and the incumbent liability placed upon farmers should compliance mistakes put them at risk for enforcement liabilities and certainly some level of inadvertent errors seems inevitable.

Increasing the possibility for misinterpretation of the legal requirements is the fact that State lead agencies and university extension services, charged with the education and compliance assistance components of the implementation process, are receiving from Federal agencies a very small portion of the funding needed to adequately prepare for the training materials and to disseminate the information to farmworkers and handlers on a timely basis.

Additionally, EPA has failed to provide the needed educational materials to States within EPA's prescribed time lines. This is an underfunded mandate for the State lead agencies. The complexity of WPS, which is the place for much of the criticism by agricultural employers, can be seen in the notification requirements. In the agency's intent to address an already complex issue, the EPA has responded with a lengthy and equally complicated solution.

While such solutions may be understood by the pesticide manufacturers and distributors who are accustomed to Government regulations, the revived WPS attempts to include farmers in the same manner, farmers do not employ full-time attorneys to interpret and develop regulatory compliance programs for them. Farmers do not employ risk control managers to implement and oversee compliance with regulatory mandates.

WPS doesn't recognize the difference that exists between large corporate farms with hundreds of workers and many small farms that only employ a few intermittent seasonal employees. The complexity of the rule puts farmers at great financial risk. The cost of the compliance may be insignificant when compared with the greater risk for tort liability resulting from technical violations of the rules which might not have caused any actual harm to a worker.

This same complexity of the WPS creates a probability that every agricultural employer will at some time be in violation despite best intentions to comply. An example will illustrate how the notification requirements may be impractical or unworkable. Specialty food crop growers have been the focus of agricultural worker safety programs because of heavy reliance on migrant farmworkers, but I would like to outline a grain farm example.

Grain crop producers are the largest group of agricultural employers. However, they employ fewer outside workers per farm than do specialty crop producers such as nursery, fruit, and vegetable growers. Communication requirements under the WPS differ because 30 to 50 percent of herbicides used by grain crop producers are custom applied and herbicides represent 80 to 90 percent of their pesticide use.

The WPS requires a cost on the pesticide applicator to, One, notify the farmer about the crop location to be treated; two, set the time and date for pesticide application; three, identify the pesticide product, EPA registration number, and active ingredient; four, inform the farmer about specific reentry intervals for each pesticide; five, inform the farmer if double warnings are required; and six, inform the farmer of other worker safety precautions from pesticide labels.

Simultaneously, the farmer must provide the custom applicator with similar information if the farmer himself or another applicator has applied a pesticide within one-quarter of 1 mile of an area that might be entered by the custom applicator or his employees. This communication requirement places a tremendous burden on the farmer and custom applicator.

During the rush to accomplish spring field operations, when most grain crop pesticides are applied, farmers work long hours, in many cases custom applicators provide services 24 hours a day. In other words, for the farmer and custom applicator to satisfy the WPS requirements, both parties will have to be in regular communication. Since both the farmer and custom applicator will be operating away from their business offices, cellular phones or two-way radio offers the only practical means for the farmer and his custom applicator to satisfy the WPS requirement.

Currently, cellular telephone use is not universally available in all rural areas, and the farmer is not likely to be available for two-way radio communication at all times.

Half of the farmers in Ohio have off-farm jobs. The communication requirement for the custom applicator creates a significant problem. The part-time farmer is likely not to be available for telephone communication. According to the WPS, the custom applicator cannot perform pesticide application for this farmer until the communication requirements are met.

Considering the hectic pace of field operations during crop planting season and other factors such as weather delays, equipment breakdowns, and various supply problems, disruption in the schedules of farmer and custom applicators will occur. Each change in schedule, for either the farmer or custom applicator, has a potential to modify compliance with WPS communication requirements.

My colleague and chairman of NASDA's task force, Texas Commissioner Rick Perry, carefully described the overall concern that we agricultural officials have with this new worker protection standard. His recommendation for a delay in enforcement of this regulation is the only appropriate reaction for EPA to take.

As Commissioner Perry explained, we are not proposing a complete halt to the program. We encourage EPA, in coordination with the State lead agencies, to move forward with enhanced education and training activities as well as compliance monitoring, but a delay in enforcement will allow EPA and the States to address and correct the overreaching and burdensome portions of this program.

Thank you for the opportunity to share the concerns and perspective of the farmers from the Midwest.

[The prepared statement of Mr. Dailey appears at the conclusion of the hearing.]

Mr. STENHOLM. Thank you.

Next, we will hear from Mr. Steve Horn.

**STATEMENT OF STEVEN W. HORN, COMMISSIONER,
COLORADO DEPARTMENT OF AGRICULTURE**

Mr. HORN. Thank you, Mr. Chairman. I am Steve Horn, commissioner of agriculture for the State of Colorado, and I do appreciate the opportunity to testify this morning.

My testimony today will concentrate on pesticide label requirements under the worker protection standard. As I am sure you are aware, the label is, in fact, the law. Those labels will provide for the regulatory enforcement ability of that standard.

Implementation of pesticide labels undoubtedly is the key regulatory link between State and Federal programs. Pesticide label statements are the basic enforcement component of assuring protection of persons who handle these materials or who may be exposed to their various residues.

We do, in fact, support EPA's diligent efforts to improve pesticide labels and to provide increased protection to workers and to handlers. But NASDA, as you heard today, is concerned that EPA has, through its ambitious efforts to change labels for increased protection, uniformity in interpretation, and predictable enforcement, established a program that may have just the opposite effects.

The impact of the label implementation plan has broad implications, not only to regulators, but also to those who apply and sell products subject to label amendments. Under the guidelines provided to pesticide registrants, there are a series of options that they may choose to effect the label changes of the worker protection standard which must be accomplished by April 21, 1994, which is the cutoff date.

These options were developed by EPA after the National Agricultural Chemicals Association proposed that EPA delay label changes until October of 1995; a request that is similar to what you are hearing today from NASDA.

These options were created without sufficient consultation with State departments of agriculture who are charged with the enforcement of the requirements. While we understand the need to provide the options outlined in the notice, if the April 21, 1994, deadline is retained, the options create a regulatory nightmare which will prohibit adequate enforcement of the standard.

If a registrant elects to choose what has been called a self-verification option, the State lead agencies will have substantial difficulty in determining whether that registrant is, in fact, in compliance. There is no mechanism or system for the States to know whether the products observed in the field have been self-verified or whether they have even met with WPS labeling requirements.

Also, noncompliant products that are released for shipment before January 1, 1994, may be sold or distributed after the cutoff date under certain conditions. State lead agencies responsible for enforcing the new labels may not be aware of the actual shipping date without dedicating a significant amount of resources for tracking bills of lading, shipping invoices, and inventory receipts. The shipment may be in another State and the access to information may be limited.

Registrants would be required to make generic labels available to the retailers and distributors that purchase these noncompliant products. These businesses could then make those generic labels available to users at time of purchase.

There is no enforcement safety net or mechanism to ensure that businesses distribute these generic labels or whether the purchaser even keeps it, much beyond the store.

Enforcement staff would be required to conduct an extreme amount of followup work to determine a paperwork trail of compliance. Furthermore, applicators would have no incentive to retain the generic label if it was included with the product and would instead follow the container label. A dangerous situation.

This, in effect, would not reduce potential exposure to workers and handlers. Without the generic label at the site, regulatory officials would have a fair amount of difficulty in determining whether or not it was actually provided. In addition to the generic label, a registrant may opt for what is called an interim labeling. This essentially requires a sticker on the container label that refers the user to a product-specific label. The sticker would, for all practical purposes, tell the user to ignore the container statements and comply with the interim label directions and, as you can predict, the same type of enforcement problems are going to occur under this scenario.

To complicate this matter further, a registrant may elect different options for the same product, depending upon stock inventory, depending upon shipping dates. In essence, a retailer/distributor or user could end up with the same products, but different type of labeling.

In all of this confusion, the applicator could inadvertently choose the wrong one and simply be found in violation. This type of labeling circumstance establishes a very arbitrary and confusing decision for the applicator as well as the enforcement staff attempting to determine compliance.

We support the need for EPA to improve the quality of pesticide labeling and provide for reasonable transition necessary to implement the new standards. But these elements have, unfortunately, contributed to an implementation plan that will simply impede enforcement by our State regulatory officials.

Also, because of the various options, users will be bombarded with conflicting or different labels that will contribute to the uncertainty of proper and safe use.

In summary, we support the concept of uniform label statements and the pursuit to protect persons from exposure to the use of pesticides, but EPA and regulation will in fact create confusion in the regulated community and establish a patchwork of enforcement problems due to all the various labeling options.

We strongly recommend that EPA delay the April 1994 cutoff date in favor of a strict label compliance deadline consistent with the October 23, 1995 date.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Horn appears at the conclusion of the hearing.]

Mr. STENHOLM. Thank you.

Next, we will hear from Bob Odom.

STATEMENT OF BOB ODOM, COMMISSIONER, LOUISIANA DEPARTMENT OF AGRICULTURE, AND PRESIDENT, NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE

Mr. ODOM. Mr. Chairman, I appreciate very much you calling this hearing and giving us an opportunity for some input. I think as you listened to the other commissioners, one of the problems that we have had is an opportunity for input into the regulations that EPA has adopted.

Most of us are lead agencies. Most of us are lead agencies. And when the lead agencies don't have the opportunity to communicate and have the input, then there is something wrong with the system. And we are not saying that we don't believe that there needs to be some regulations. We are not saying that we don't support them.

We are saying that there needs to be an opportunity for input for people that are at the grassroots basis that understands both sides of the problem. The other issue that was raised was money, and I heard the young lady say there is plenty of money. I would like to know where it went.

States surely are not receiving the amount of money that it takes in order to provide the amount of training that is required by that lead agency if you are going to maintain our certification.

And the question had been asked: What if you do not take the program on? And the answer that my people received is that you lose your certification. Not only are you talking about worker protection, but the certification of being able to regulate all the pesticides and then the EPA would step in.

I want to speak primarily on one other issue. That it is important to protect the worker's life. And I want you to take a look to the right. This is the clothing that is required to be worn in a category I. This clothing does not breathe. And one pesticide that has already been classified, mo-EC, happens to be an insecticide that we use in Louisiana for sweet potato farmers.

And most of the farmers are small and most of them have open cabs and don't have the ability and luxury to be able to have cabs on their tractor. In order for him to drive the tractor in the middle of the hot months that you and I have, Representative from Texas, in Louisiana, or in some of the other States, this is the clothing that he has to wear. It is a proven fact that it will kill him in 10 minutes during the heat. What is better? To die in 10 minutes or take the possibility of living for 50 years? And that is the reason that we need to put on another set of clothes, coveralls, the requirement of most of them to wear in the reentry standards.

And we talk about integrated pest management programs. If we are going to have that, we have to have the ability of the consultant to go in the field. Sometimes that consultant needs go in the field within the restricted time of the label. If he can't get into the field, you and I know what the farmer is going to do. He is going to spray.

There is going to be more pesticide, more dollars out of his pocket. We are saying, let's put some reasonable opportunities for the consultant who is a professional, who is licensed, who has to be certified by each State who is supposed to know the hazards, the responsibility on him in the reentry rather than that responsibility

on the farmer, and requiring him to wear this clothing or that clothing in the middle of July in Louisiana, in Texas, in Mississippi and some of the other States is an impossibility. It is an impossibility.

So all we are saying is give us an opportunity to make sure that we have some opportunity for input. Give us an opportunity so that we can take the techniques that we know that are down there within these States and agencies and make sure that we can do both jobs; protect the worker, provide the farmer with an opportunity.

And I don't know about your States, but in my State, agriculture is struggling. Another cost, another requirement. Some of the specialist smaller-type farmers, this could be what it takes to drive them out of business. And we have to make sure that we give them that opportunity.

And again, we are not asking EPA not to have regulations. We are not asking them to abandon the regulations. We are only asking them to give us some additional time and give us an opportunity to sit down with them and be reasonable in what they require, and let's work out the programs together where we can both provide the training within the adequate time, within the capability of what EPA and the department of agriculture in each State can do.

Thank you.

[The prepared statement of Mr. Odom appears at the conclusion of the hearing.]

Mr. STENHOLM. We thank each of you for excellent testimony this morning.

I don't have any questions to ask of you, but I do have a statement to make. And I want to put it in the context of one of our next witnesses, Mr. Velasquez, who will state in his testimony in order for any training to be truly effective, there first has to be a change of attitudes from adversarial to cooperation, from greed to understanding that we are not only raising crops, but also raising families. Men and women, growers and farm workers alike make the contribution to society that God intended for us.

It is in that context that I want to make the following observations. As a Member of Congress and a member of this committee, I find it inexcusable that commissioners of agriculture from six States would come here and say that they have been excluded from the regulatory process. This is intolerable to me.

And I believe that I would speak for Ms. Goldman who happens to still be here. Dr. Goldman, I appreciate the fact that you have stayed and listened. Far too often administrative witnesses come and then leave and do not hear that which is expressed, but I think the fact that you have stayed indicates that you are willing to listen.

And to those of you at the table need to understand that at least Dr. Goldman has not been in her position very long and therefore the criticisms that are coming forward, certainly not from me, and I didn't hear it from you, it is the process that needs to be improved upon.

I hope that this hearing will, if it achieves only one thing, that it will achieve the actual happening of those of you at this table

and the EPA and the workers and others concerned, will find some time to sit down and talk to each other about these problems. That we not exclude people; particularly those charged with the responsibility.

I have heard until I am sick of it from my local State governments for us to stop mandating you doing things that you don't have the money to do and in your wisdom, based on the actual experience of facts, have a better way of doing it than what the super wisdom of those inside the beltway, both up here in the dais and the bureaucracy mandate that you do. The people are fed up with it.

And those of us that have to stand for election are going to pay the price. The people are fed up. And therefore those of us who have to stand for election are ready to be a constructive part of making some changes to make it work better, at least in an area where we are talking about the safety of human beings.

Why that should be adversarial escapes me. From my training, you know I grew up on a farm. My sons work in the field. My son today handles these same pesticides. I hope my grandchildren, if I ever get any, will have the opportunity to go on the farm. And I certainly want them to have the benefit of common sense application of the chemicals that we use. And I want it for those who work for me.

I know a very few farmers that do not want the same, but there is always going to be a rotten apple in every barrel and that is what ruins everything as far as the national media is concerned. But surely we can, after today, have a sitting down and a meeting of the minds and going over some of these rules and regulations and have a willingness to listen by EPA to those of you who express your concern, and have the workers included; those who are sincerely concerned about safety.

The folks that have their agenda to eliminate pesticides from the face of the Earth, they shouldn't be included. But once we have decided that technology is necessary for feeding not only the people of America, the most abundant, best quality, the safest food supply the world has ever known, once we have decided that that is going to move forward, then those people that have a different agenda, as far as I am concerned, do not have a right to be at the table talking about these details that we are talking about here today. But everybody does.

Unless we can bring the worker, the EPA, the USDA, the FDA, the commissioners of agriculture, the State departments of health, unless those charged with the responsibility of carrying out the law of the land can sit down at a table and talk to each other and at least have intelligent conversations, we have trouble.

Now, end of lecture, no questions. I hope that we will find, and I expect this, because my conversations with the current administration, with Commissioner Browner and others, I believe that we will find that there is a desire to do just what I have said. Whatever it takes, that is what this committee is here for. We are here for oversight.

Mr. Smith can speak for himself, but I personally get a little fed up with some of the excuses, some of the agendas, and I say this with all due respect to those that have a different agenda other

than the safety of the worker and the production of the most abundant food supply that this world has ever known, if you have a different agenda, don't come crying to me.

But we look forward to working with you and others to see that we accomplish that agenda.

Mr. Smith.

Mr. SMITH of Oregon. Mr. Chairman, I want to underpin your statement. The Government is not highly respected around the country, and it is just the reason that has been presented here today why they are not.

Audacious, outrageous kinds of rules and regulations promulgated that cannot be followed. In fact, Mr. Odom, I believe indicated that if farmers don't have oversight and are not equipped, they are going to use pesticides and may be dangerous ones.

So what we are forcing here, it seems to me, is for people to go break the law, for them to go break the regulations which is dangerous and uncalled for. So I want to suggest that Dr. Goldman is not responsible for this deadline at this point.

I agree with the chairman. So long as this Government inside the beltway passes laws and promulgates mandates on State governments without input, then that is the superior dictatorship of America. That is stupid. That is not the way we are organized.

We are organized from the bottom up and not from the top down. So I would urge Dr. Goldman and you gentlemen to contact each other. Have you made the statement about delaying the implementation?

I have heard none of you suggest that we ought not to protect workers and that these regulations, with some effort, can be implemented in time.

The very idea that 270 questions were asked by your organization to EPA and 34 were answered, is evidence enough that there has not been time for you to determine how to go forward.

So, I want to join Mr. Stenholm to urge you people and this Federal Government, the EPA, to listen and work this out so that we can protect workers. And we can do it in a meaningful way and we can do it without costing State governments a lot more money for mandates.

Thank you.

Mr. STENHOLM. Mr. English.

Mr. ENGLISH. I have no questions, Mr. Chairman.

Mr. STENHOLM. Mr. Boehner.

Mr. BOEHNER. Thank you, Mr. Chairman. And I agree with your comments and the comments of my ranking minority member, Mr. Smith from Oregon.

How long are we talking about the citizens of the United States and Government, how long are we going to keep fighting with each other? How long are the people of America going to put up with a Federal Government that keeps coming at them and where Government is fighting with the private sector, labor is fighting with the private sector. When in fact are we going to succeed in competing in this worldwide economy that we find ourselves in, we are going to have to find a way to begin to work together.

Now, before the young man or young lady, whatever, came in in the outfit, I was thinking about an occurrence that happened to me

in the real world about 12 years ago. I was coming back to my office after a sales call one day and it was about 95 degrees out, and I was coming through a housing project and here was a poor young man or woman—I couldn't tell—out with a weedeater with a helmet with big ear phones, a mask, a respirator, leather on their arms and legs, heavy gloves and long sleeves and, yes, they weren't going to get any dirt in their nose or mouth. Their ears were protected and nothing in their eyes, if they would live long enough to get the job done.

And at some point we have to work together to put regulations together that make sense, that work. I am convinced that if every small business owner in America understood their legal liability and their regulatory liability, they would all close up shop and go home because they would realize that they never have a chance of ever making it.

It baffles me. And when we talk about saving the family farm, we have no chance of saving the family farm, because as Government continues to mandate more and more regulations, we are forcing the consolidation of farmers in America. We have done the same thing in the banking industry and a number of other industries, because of the regulatory burden that we are putting on the private sector.

So I would encourage you, as the chairman has, to sit down and work together and let's develop some regulations that make sense for workers, farmers, and the people that have to enforce them.

Mr. STENHOLM. I hope that everybody's schedule will permit you to stay for a few minutes longer and listen to some of the workers and what they have to say. Dr. Goldman has listened to you and you have listened to her. And I hope that we can build on this.

I think our colleague Mr. Torres said it very well. His Nos. 1, 2, and 3 gets down to the common sense application of this. I hope that this hearing today does set the proper attitude for us to do that, what you have asked us to do and others to do and that we can accomplish those goals.

Thank you very much for being here. We look forward to working with you on this issue and others as we have in the past.

Thank you.

I call panel 3.

The next witness will be Ms. Diane Mull, Association of Farm Worker Opportunity Programs, Arlington, Virginia. Welcome.

**STATEMENT OF L. DIANE MULL, EXECUTIVE DIRECTOR,
ASSOCIATION OF FARMWORKER OPPORTUNITY PROGRAMS**

Ms. MULL. Thank you Mr. Chairman. I want to thank you for this opportunity to testify. I would like to make a couple of comments about the previous panel that spoke. Two things come to mind.

I am deeply concerned that if we delay the implementation of the worker protection standards and the implementation of its enforcement, I believe that this could have extremely deadly consequences. We could continue to lose lives, precious lives that have not been protected previously. We have been working on these issues for over a year—several years in fact, and I don't think we can afford to delay for the sake of the lives of farmworkers.

Also as far as a cost factor, it would seem to me that we have to try to look at creative ways to afford to pay for the costs of the programs. I don't think that taxpayers themselves are willing to, as we know with the budget resolution and budget deficit proposals that are going forward.

We need to look for other ways to pay for the costs. It seems that if we have various toxic chemicals, some that require a lot more scrutiny, then there should be some graduated tax on the use of those and that that fee or tax should pay for the cost that would be associated with the use of those chemicals.

Those are two things that come to mind regarding some of the comments of the previous panel.

Our association represents farmworker organizations and State agencies who operate employment and training services for migrant and seasonal farmworkers who choose to remain as agricultural farmworkers or who choose to leave agriculture.

We are concerned about the worker protection standards because, from the standpoint of our association, if a worker becomes injured and can no longer withstand the rigors of farm employment, our association is forced to retrain them for alternative employment. Also we have a responsibility for dealing with the worker who chooses to remain in agriculture, and to provide them with the training that is necessary to help them enhance their ability to continue their work in agriculture, in other words, pesticide worker safety training.

What EPA has attempted to do in the implementation, I think they deserve some commendation on the efforts of which they have undertaken. I think that the worker protection standards represent a step forward in improving the workplace safety for agricultural workers who are faced with some of the most hazardous working conditions.

I am encouraged by comments that I have heard from Dr. Goldman and from others regarding EPA's willingness to strengthen existing statutory Government authority and to improve the scientific data as well as to reorient the efforts to focus on preventing problems at the source.

I think that this will help our members provide a better means of dealing with services for farmworkers. I also feel that EPA should be commended because they have attempted to bring together a diverse group of individuals from across the board: People, organizations, and agencies interested in dealing with this issue.

We have sat down at the table over the past year and have talked about how this program would be implemented, and what these worker protection standards represent. There have been representatives from State departments of agriculture, from cooperative extension, from agricultural industry, as well as farmworker organizations and EPA representatives who sat down around a table and we talked about these issues. We have strategized and planned on how this will work, and we have been doing this for over a year.

I think, too, that from our perspective, we feel that the primary focus of funding and training must be oriented toward training the workers. It is the workers who need this information. We are deal-

ing with an industry who has never had these types of requirements before, and it is similar to other labor standard protections.

An industry trying to make the adjustment to come into modern-day, labor management practices is going to need efforts to train the farmers on how to deal with this. The workforce must recognize that they have a responsibility themselves for worker protection, but also that their employer has a responsibility to ensure for their protection on the job.

We have been involved in a cooperative agreement with EPA and have assisted in the development of some of the WPS materials. Congressman Torres held up a poster, we worked with EPA on the development of that poster and other areas. I would now like to focus on suggestions for improvements.

We feel that reentry intervals should be longer, that tolerance levels should be set, not based on the consumption by the general public, but based on the exposure risks of the families, both women and children. We have children working in the fields. We should look at the risk to those children who are working in the fields.

We feel that increased studies are needed, particularly on women and children, and the effects of pesticides on them. The administration of this training program is going to be maintained by the States, but we encourage that the States be—well, we encourage EPA to strongly facilitate States establishing a partnership with farmworker organizations.

Farmworker organizations have been out there training farmworkers for 20 years. We have an established working relationship with farmworkers. To not utilize this network of community-based agencies that are out there with expertise with bilingual staff, staff that are ethnically representative of the farmworker population, would be a waste, and I think would be a really ineffective approach toward implementing training for farmworkers.

There are other areas with respect to heat stress. I noted the young gentleman that was dressed up in protective equipment. I recognize that it gets very hot. However, if that person was not wearing that equipment, within 10 minutes he would die from the exposure to the pesticides.

There is a definite way of dealing with heat stress on the farm. Do it the same way as the army. The military does training on this all the time. They did with our military who were in Desert Storm. To deal with heat stress, you provide cool drinking water and you provide frequent breaks.

There is no reason why a person who is operating a tractor cannot stop that tractor and take the breaks to drink cool water and refresh themselves before going back to work. We are not dealing with slave labor. We are talking about humane treatment. There are humane ways of dealing with heat stress. To make frequent breaks and offer cool drinking water to the workers would help deal with a lot of heat stress problems that workers will face. Particularly for those required to wear protective equipment, because we feel that protective equipment is a step forward in the right direction to protect workers from dangerous exposure.

We also feel that we would not want to see 16 days of training lengthened. We would like to see it shortened. I think a number of workers are going to be missed with employers who have a full

16 days within which to train the workers. What happens is that you have workers who are coming into an area and they work for various employers. If each employer has a 16-day period before they have to provide training, those workers could spend literally months in an area and never receive any training under the worker protection standards. So we feel that shortening the time as opposed to lengthening is preferred. Also at least an hour or more of training that is intensive is absolutely needed.

We do not feel that any sector of the agricultural industry should be exempt from compliance with the worker protection standards. To set that precedent is going to establish a problem. You will have a landslide of additional industries seeking exemption across the board. Equally applied to all sectors of the industry is the only way that worker protection standards will work effectively. As equally as we can apply these standards in agriculture as in other industries will make it easier for the industry to understand the regulations.

The last area I want to touch on is the need for funding. It is true, that I think EPA has done a magnanimous job in trying to deal with the limited resources that they have had available. They have tried to utilize organizations, a number of which sit at this table, to provide input, and through this cooperative working group, the establishment of a national advisory committee, we believe is also a very good positive step forward.

But there has to be some way and some mechanism of generating additional resources. To my original comment, perhaps we could look at a graduated tax tied to the use of more toxic chemicals being required to pay a higher fee. Less toxic chemicals that require less enforcement and monitoring would pay a lesser fee. These fees could help to offset some of the costs for the expense of this program.

Thank you, very much, for the opportunity to comment.

[The prepared statement of Ms. Mull appears at the conclusion of the hearing.]

Mr. STENHOLM. Next Mr. Mr. Velasquez, president, Farm Labor Organizing Committee, Toledo, Ohio.

STATEMENT OF BALDEMAR VELASQUEZ, PRESIDENT, FARM LABOR ORGANIZING COMMITTEE

Mr. VELASQUEZ. Thank you, Mr. Chairman, for the opportunity to make these comments.

My name is Baldemar Velasquez, president of the Farm Labor Organizing Committee. We represent close to 5,000 farmworkers on 120 family farms contracted to grow crops for Campbell Soup, Heinz USA, Vlasic Pickle, Green Bay Foods, and Aunt Jane Pickle Company in Ohio and Michigan.

I am not here as an opponent of the cultivating sciences in agriculture, as I am fully aware that increases in productivity are essential to job security and increased earnings. No worker, however, especially farmworkers—where entire families work—wants to place his family in jeopardy. It is first our greatest desire to remove the most toxic chemicals like phosdrin, maneb, methyl bromide, and others.

Short of having that desire granted, management and handling of these compounds become a very serious issue with us.

The three serious poisonings that our members have directly experienced with maneb, phosdrin, and methyl bromide could have been avoided by properly enforced entry and reentry standards. After an aerial spray poisoning of workers in an adjacent field, we negotiated a clause in our union contract with that grower's company that required their growers to notify workers in adjacent fields whether those workers were employed by him or not.

These notification standards have not impacted the industry, neither has the protective gear, such as gloves, masks, and goggles on our tomato harvesters. In order to deal with management issues, such as training of workers, we have initiated an ambitious effort through our industry roundtable, which includes all the food processing companies and all the various growers associations that grow the crops participating, we have initiated an ambitious effort through that roundtable which will be addressing these and other productivity and management issues.

In order for any training to be truly effective, there first has to be a change of attitudes from adversarial to cooperation, from greed to understanding that we are not only raising crops, but also raising families, men and women, growers and farmworkers alike, to make the contribution to society that God intended for us.

This committee should consider ways in which the relationship between workers and growers could change so that there would be developed the yet nonexistent science of employer-employee relationship. I would like to add that the object here is to eliminate the need for regulatory agencies to have anything to enforce. Lacking this training would be difficult to make any differences in the cultural and work practices.

Also, in our case, the union has taken the initiative to train our members on pesticide safety, but the only place where there is meaningful implementation is where we have union contracts, lacking this arrangement throughout most of the country, I see no other option but to implement and strengthen the worker protection standards.

When God spoke in Genesis for man to have dominion over the Earth, the only land I can conceive of ruling over is the land that is in my front yard. Perhaps that would be a good measure to not put things on it that could possibly endanger it, the children and the pets and the visitors that walk upon it.

[The prepared statement of Mr. Velasquez appears at the conclusion of the hearing.]

Mr. STENHOLM. Thank you.

Next, Ms. Shelley Davis, Farmworker Justice Fund, Incorporated.

STATEMENT OF SHELLEY DAVIS, ATTORNEY, FARMWORKER JUSTICE FUND, INC., ACCOMPANIED BY VALERIE WILK, HEALTH SPECIALIST

Ms. DAVIS. Good morning. As the GAO succinctly stated in its 1992 report, "Hired Farmworkers," and I quote, "Federal laws and regulations give inadequate protections to farmworkers exposed to harmful pesticides." That is where we stand today. Labor intensive

agriculture has put together a volatile mix; large numbers of workers working in fields that have been treated with millions of pounds of pesticides. The result is predictable. Tens of thousands of workers are harmed each year and farmworkers face the highest rate of chemical-related illness of any occupational group in the Nation.

Since World War II the use of agricultural pesticides has exploded, but the research on the health effects of these chemicals has not kept pace. What we do know is that these chemicals are highly acutely toxic and cause eye and skin disease, coma, even death. Organophosphates are neurotoxins causing short- and long-term neurological harm. But much more is unknown.

It is suggested that scores of pesticides cause birth defects, cancer, sterility, and other harmful long-term illnesses. In this environment, we must protect the farmers and farmworkers of this Nation by strong pesticide regulation. Farmworkers have been seeking improved worker safety standards since the 1970's.

In 1987, virtually every other worker in this Nation was covered by the OSHA hazard communications standard. Farmworkers are still waiting for comparable protection. We cannot delay this any further. The worker protection standard is a modest step forward in this direction. It is essentially a win-win situation. Growers benefit from a decreased number of accidents which will result for them in less lost work time, decreased worker compensation costs, and improved safety on their land and water. For farmworkers the benefit is obvious, fewer workers will be injured, fewer children will be harmed.

Let me give you a few examples of accidents that could have been prevented had these standards been implemented earlier. In Washington State 27 workers were injured by phosdrin. Many were sent to the hospital. A worker was hospitalized for 4 days because he was mixing and loading phosdrin using a respirator that had not been cleaned, and the worker was not trained in the safe use of that respirator. This would be changed by the worker protection standard.

In 1987, for example, a Michigan worker was exposed to chlorpyrifos through drift. The next day when he went to his doctor, his heart stopped beating while on the examining table. He was rushed to the hospital and spent 4 days in intensive care before the doctors discovered that there was probably a chemical cause for his ailments. This worker was never notified that chemicals were being applied in the adjacent area or let alone the time; nor was he ever provided emergency assistance to take him to the hospital.

A Texas worker in 1986 was splashed while he was mixing and loading a pesticide. Because there was no eye flush water available and no emergency assistance, he went to the doctor later that day but it was too late. He lost his eye because he didn't know what to do and that there was a need for eye flush immediately after the injury.

These problems would be solved by the worker protection standard, but there are others that would not be solved, and we need greater protection. The fact is that almost every other worker in this Nation is covered by the Occupational Safety and Health Act,

which guarantees a safe workplace to the extent feasible. By contrast, farmworkers are only protected against unreasonable adverse effects from pesticides taking into account the costs and benefits, and especially the costs of agricultural commodities.

In other words, FIFRA nowhere prioritizes the health and safety of farmworkers. This double standard must change as a matter of environmental justice. It is time for farmworkers to be treated like all other workers and they are entitled to know that less harmful substances will be substituted for more harmful ones and where possible engineering controls will be required, that they should be trained before they are exposed to pesticides and that their employer should report illnesses that result from pesticide exposures. These are basic protections that farmworkers are entitled to like every other worker.

We urge you to press the States forward, not to delay implementation of the standards. Farmworkers have waited long enough. It has been known since August of 1992 that these regulations would be coming on board. It is long enough for people to gear up. There are months ahead still. And every effort should be made to meet that deadline.

Thank you.

[The prepared statement of Ms. Davis appears at the conclusion of the hearing.]

Mr. STENHOLM. Thank you.

Next is Mr. Jose Mendoza, farm labor contractor.

Ms. BONANO. Good morning. My name is Brenda Bonano. I am from the Farmworker Justice Fund. I will be the translator this morning.

**STATEMENT OF JOSE MENDOZA, FARM LABOR CONTRACTOR,
BALM, FL, ACCOMPANIED BY BRENDA BONANO, TRANSLATOR,
FARMWORKER JUSTICE FUND, INC.**

Mr. MENDOZA [through interpreter]. My name is Jose Mendoza. I am here to give a testimony regarding a situation that happened on November 15, at Goodson Farms, how the people was injured by the poison of some pesticide. Seventy people were injured by this poison. About 40 of them were really in danger of their lives, 6 or 8 of them were on intensive care. What I would really like to know is what the danger is in these pesticides. And we need more protection from our employers, that this doesn't go on.

It was November 15, 1989, at the Goodson Farms, they applied a pesticide—the night before they sprayed it, 15 hours before, and we got to work in the morning with about 25 or 30 people. And the manager said where I was supposed to start, as they do everyday.

I started work at 8 o'clock in the morning. At 9:30 in the morning, people started feeling bad. There was one of them that said, Mr. Mendoza, I don't feel well, could I please go to the clinic? I said it was OK that he could go. At the same time, two or three other workers said the same thing. They were not feeling well. They said they were feeling pretty bad. There was sweating. When I saw all of these people feeling bad and sweating a lot, I felt afraid about it. They were getting pretty pale and his eyes were changing, and the others were about to throw out up and all that. They had a very strong headache in the back of their heads.

I was afraid and I told one of my workers to go and tell the manager to come in and see for himself what was going on, because there was something going on, and I didn't know what it was.

They were getting sick like every 10 minutes, there was somebody coming in sick.

The person that I sent, he came back and I asked him what did the manager say? The manager said that just to leave them aside for a while to cool off so that they could feel better. So I told the workers the same thing that the manager said. But I told this guy, one of the workers, to go back and tell the manager to please come back and see what was going on. We were very scared because we knew something was wrong, this was not normal. The manager came to see what was going on with the workers.

Then it was 12 noon, so it was time to go and eat. So a car came from one of the other crew leaders, there are about seven of them, so he was bringing some other people sick also, the other crew person. I took about 15 people to the clinic that day.

And when we got to the hospital, the doctor said that they were poisoned by the chemical. There were about 70 people sick. There were too many people and the doctor started taking them to different clinics. People were feeling pretty bad, so they sent for other ambulances to take them to other clinics. There were some of them that they had to take to a hospital to intensive care.

The doctor from the Ruskin Clinic really worried about the condition of the workers that day.

I just would like to let you know in these fields there is no information about any danger whatsoever because at the moment we got there, nobody told us that there was any danger or any poison or any pesticide. And those are the consequences that the workers in the fields have. We need the protection, so we don't get these abuses, because I lived this experience and I was sick about this too.

We need to have signs and things to let us know that they cannot get into these fields, my workers, because if they had known, they would have never gotten into these fields just like that.

We really don't want another problem like this in the fields. We were the ones who suffer the consequences of this. We don't have those protective suits to wear. We don't have the masks, we don't have any of that equipment available. So we take the poison in our body, our skin, or eyes, et cetera, et cetera, because we don't have any protection. A lot of people were injured by this problem and I don't want this to keep happening.

We need to know about when these fields are sprayed, et cetera.

The workers have never been trained about these pesticides or how to protect themselves, and the consequences of course are economical. They didn't have money to pay their bills and some churches will do some charity and help them with food.

Thank you, very much, and we hope that this testimony could do some good about this whole cause. Thank you.

[The prepared statement of Mr. Mendoza appears at the conclusion of the hearing.]

Mr. STENHOLM. Thank you.

Next, Mrs. Jan Cox, safety and health administrator, Rural Opportunities, Inc.

STATEMENT OF JAN COX, ADMINISTRATOR, SAFETY AND HEALTH, RURAL OPPORTUNITIES, INC.

Mrs. COX. I would like to thank you for inviting me to this hearing to present a very practical side of training farmworkers and pesticide safety, one that is currently being provided by our organization.

My name is Jan Cox. I am the safety and health administrator for Rural Opportunities, Incorporated. Rural Opportunities is a not-for-profit organization that has provided opportunities for farmworkers for 24 years. I, in turn, have lived and worked in an agricultural community all of my life. My husband and I were farmers on a small farm for 20 years.

During that time, I also taught for 17 years as a seventh and eighth grade English teacher in a rural community with farmers and farmworker children.

Over 7 years ago I joined Rural Opportunities in a position that required that I develop a curriculum to teach pesticide safety to farmworkers and their families. We initially developed a program which brought pesticide safety education directly to the farmworkers in New York State.

Our goal was to provide information to farmworkers about New York State's right-to-know law, which has many of the same components as the Environmental Protection Agency's worker protection standards. Our funding for this program is from the New York State Department of Labor.

There was no current material available that adapted to the farmworkers' needs, so our first task was to develop an appropriate curriculum. We developed a handbook that addressed the issues of pesticide safety at a fourth or fifth grade reading level, and we translated this into Spanish, Haitian, Creole, and Polish all at the same reading level because that is who the farmworkers are in New York.

We felt that even at this reading level the concepts were too difficult to comprehend a second language, so our second task was to devise a system to deliver this system to the workers in their primary language. We have had a small grant, so we had to be very creative.

We developed the trainer program which allowed us to train members of the agricultural community to train their peers. These trainers go directly into the farms and deliver the information to the farmworkers. We had some difficulty in the beginning accessing these farmworkers either at the farm sites or in the camps where they live. We then began to work with the farm community. Farmers, as my husband and I felt, could be great at what we did, but not all of them are teachers and yet New York State's right-to-know law, same as EPA, required them to train their workers on pesticide safety, only ours was each year.

We are teachers, in our organization, so we teamed up with the farmers to give these workshops. The farmers now call us, a simple phone call, when they have a group of workers. Most of our training is done before the season begins, before day 1 out in the field.

One of our trainers goes out, agrees to a given time and place, and goes out to the farm and delivers the workshop without any direct charge to the farmer. We have found this to be extremely

productive for the farmer and farmworker. We train over 10,000 farmworkers each short growing season in New York.

This is very similar to the program that the EPA is introducing in April of 1994. In fact, our program is one of the base programs used to develop this national program. I have been one of the master teachers that AFOP has used as one of the leading trainers and the trainer program for worker protection standards.

We are very concerned where our program will be in April 1994. It will take very little adjustment for our program to give the EPA pesticide control material instead of the New York State right to know, but the EPA has not provided the funding to make our program part of the national program. They are leaving everything up to the individual State.

New York has very little funding for this project and they are not willing to share. They also want, New York State, wants and have been given control over issuing certification cards to show that a person has had the EPA training.

So if the Department of Labor decides to continue our funding program, the workers who we train, with certainly the appropriate materials and in an appropriate manner, will not receive a certification card because we will not be part of the State program.

What will this do to the validity of our program? It could make all of our meaningful work—valueless. The State is not filling in the gap of the demise that our program would create. The State has asked that I help them do five or six workshops all of next year. Their plan is to spread these across the entire State.

We may reach some farmers, but I doubt if we will reach even one farmworker with our State program.

The EPA must ensure that programs like ours that are readily established in areas can continue to operate. It is difficult to maintain an equal and parallel strata of training and certification at both the State and national level, but this must be maintained to ensure that all existing programs can be utilized by the farmer community.

Thank you.

[The prepared statement of Mrs. Cox appears at the conclusion of the hearing.]

Mr. STENHOLM. Thank you. Next, Mr. Michael Johnston, International Brotherhood of Teamsters.

STATEMENT OF MICHAEL A. JOHNSTON, UNION REPRESENTATIVE, LOCAL 890, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. JOHNSTON. Good morning, Mr. Chairman. I work for Teamsters Local 890. We represent nearly 8,000 farmworkers in California and Arizona, 20 percent of the workers that grow and harvest lettuce, cauliflower, celery, and broccoli in that region, and we have a number of concerns here.

A couple of other people, notably Shelley Davis, have already spoken to some of the weaknesses of these regulations and we feel that this has taken 10 years to develop and represents a modest step forward for farmworkers, and we are not patient with an eleventh hour attempt to derail and weaken these regulations.

First of all, Mr. Voss from the California Department of Food and Agriculture attached to his testimony a study that talked about the impact of these regulations, particularly the reentry requirements on the lettuce, cauliflower, celery, and broccoli industry in California, and postulated \$200 million odd increased cost to the consumer as a result of the proposed regulations. And we have some real problems.

I took a look at this study. That is the industry that our members work in. First of all, the way they got their objective sample to learn what the impact of the WPS was going to be was as they say in their report, we sent out a questionnaire to growers and agricultural commissioners in 16 counties, 49 of them answered and so we went and interviewed them.

What they are saying is that the 49 people that responded saying that they didn't like the regulations were their base for their study. They added to that a group of unspecified industry leaders. They didn't talk to us. I assume they talked to pesticide salesmen, to agricultural lobbyists. They developed from that in a way that they don't at all explain in their study, a theory that there would be a 5 percent loss of yield. I don't buy it.

I went and talked last week to the operating managers for a couple of the biggest lettuce, celery, broccoli, and cauliflower shippers in California, and they basically said no, there are different ways to work around these restrictions.

Our main concern is that other States have to take the same kinds of measures we have to take in California so that we are on a level playing field in marketing and harvesting our product. That was the first problem I had with the report.

The other problem is the report went on to say this 5 percent loss in yield is going to cost \$235 million to consumers. And they cited a study by a guy named Lichtenberg in 1988 that they say studied the impact of elimination of parathion. I was interested because lettuce prices are one of the most unpredictable commodities there is, and anything that talks of what the prices are going to be are of great interest in the field.

I went and got a copy of the study. This study is the basis of all of their figures on what all of these regulations are going to cost the consumers. The study doesn't have the word lettuce in it anywhere. The study turns out to be a study of the cost to consumers and the yield and price implications of eliminating parathion in almonds, plums, and prunes. Lettuce doesn't grow on a tree, neither does broccoli, celery, or cauliflower. You are eating last year's almond crop.

If the prices go up, they might think of planting more that may come into the market in 6 years. But lettuce comes to the table in a month of months. It is fraudulent. The CDFA report actually says this—they used basic values taken from a study from Lichtenberg on the impacts of canceling parathion for use on lettuce, and then it refers to the demand elasticity for lettuce.

I got the report and the word lettuce doesn't appear in it. It is about three other commodities. The numbers that they are presenting are completely groundless, and to us it illustrates the fact that they are pulling stuff out of the air. The guy who got up and stood here in that rubber suit, completely ignoring the fact that you can

make suits out of Gortex, which breathes and meet the EPA standard of not passing water soluble materials. We see a problem here.

The thing that was correct in the study that Mr. Voss cited is this industry in California is based on medium-sized farms with multiple crops, lots of small fields. Often they are harvesting in this field while they are planting in the next field. That is an argument for the WPS.

Lettuce ranks fifth in California of industrial injuries from pesticides of all the crops. Of the workers who were injured in the last few years by pesticides in lettuce, only 11 percent of them were pesticide applicators, handlers, and loaders. All the rest of them were other kinds of farmworkers. People who are now under California's current regulations not trained on pesticide handling.

Of the injuries that farmworkers received, 82 percent of them were systemic and respiratory. Not the burns where the cause is immediately apparent, but the kind of thing like Mr. Mendoza was talking about or the thing that shows up days later where you don't really know what the cause is unless you know what is going on around you.

The nature of that industry means that the elements of the WPS that talk about training farmworkers who are not the direct pesticide handlers but who are working in that vicinity are very important. The element that talks about oral notification of farmworkers of what is being sprayed around them is very important.

And the element that talks about centralized posting is very important of what is being sprayed in the vicinity. Currently in California there is a file in the grower's office as to what has been sprayed. Workers are not going to go—I mean you kind of risk your job if you go ask every week what was sprayed in the last week.

These are not workers with a lot of power in their lives or industry. It would place a huge burden on them. We think these regulations are a modest step forward in taking some of the good things that we have in California and extending them to the rest of the country and correcting some of the things that are missing in California's regulations, and we would be disappointed if there is any move to weaken or delay them.

Thank you.

[The prepared statement of Mr. Johnston appears at the conclusion of the hearing.]

Mr. STENHOLM. Thank you.

Thank each of you very much for your testimony today, your input. If I might try to summarize what I have heard you say today, notification, particularly when you are using more toxic chemicals, is a very high priority.

Would that be a fair summation where there is a known toxic chemical that has a very adverse effect on human beings that we need some improvement in the notification process to where individuals will have some idea and some responsibility on those spraying with that particular chemical?

Mr. JOHNSTON. Notification not only of the workers in the field that is being sprayed, but in the surrounding fields.

Mr. STENHOLM. Then if we get into some of the complexities that if verbal notification might be rather difficult to achieve, where you have not only farmworkers, but you have also crop checkers, et

cetera. So we get into a less than an absolutely perfect science in the notification.

I am putting my own words to this now as we try to grapple with a way in which this notification should occur. Clearly if Mr. Mendoza and his crew is working in a field, it is very easy to notify them. And to me, I can't conceive of any farmer putting a crew out into a field in which you have had spraying within a matter of hours. I have a difficult time conceiving that, yet I know it happens.

But I think that is the exception, not the rule. That is something that, through the educational process, we need to find a way to deal with in a more common sense way.

I am reminded of something that occurred in my district oh, 10 or 12 years ago, not in crops, but we have a tree called the mesquite tree that farmers and ranchers try to eradicate as best we can. We still try to control it. And I received a call from an elderly couple saying if the ranchers would just notify me when they are spraying, then I would go visit my grandchildren, and my husband would not get as deathly sick as he gets because of the drift and that seems a reasonable request and once it was known, there was no problem. The ranchers gladly made that notification to that couple once they knew there was a problem.

We have to try to work together to achieve that support.

Mrs. COX, your education program, is that New York State funded or do you—

Mrs. COX. It is New York State.

Mr. STENHOLM. I had a question and it escapes me right now. Perhaps it will come later, and we will get back to you on that.

I am a little troubled with the overall tenor that each of you are saying we ought to go ahead with these rules and regulations regardless of whether there are problems because the end result is too important for us to wait another day or two.

That troubles me a little bit, and I say that perhaps out of pure ignorance on my part. And that would not be difficult to prove as far as these rules and regulations are concerned. But I heard the same basic arguments earlier this year when we had a labeling requirement on meat. Because we had the unfortunate tragedy of deaths regarding *E. coli* poisoning in some regions, there became an absolute need, regardless of costs to label certain products, and the courts held that it was not done correctly and therefore we had to step back.

I hope in the deliberations that we encourage the commissioners and the EPA and we certainly expect you to be a part of these, that we can look at these rules and regulations from the standpoint of, yes, perhaps some of them do need to be put in immediately, but perhaps with some of them, we would all be better off, since there are limited funds and we are not going to be able to increase the funding necessary to do everything that perhaps you, or I, would want to do, but in the necessary prioritization, we need to sit back, it seems to me, and to say, well this makes sense.

Notification, if that is the highest priority, perhaps we ought to look at and see what we can do to make sure that is implemented and get the cooperation of everybody.

And I don't pose this as a question to you to be answered today, but just in our own minds to say if we are going to say, yes, these regulations were promulgated perfectly, the commissioners of agriculture, your concerns are all wet. What you are saying to us is of no concern, really, because the importance of the end result of the task is so important that we need to go ahead and do it.

I say this to you, perhaps that is counterproductive to the cause in which I think we can all agree. If we just take that blanket approach. Maybe I am wrong, and I hope that as we discuss this, since one of the things that I do acknowledge and you have mentioned this in your own testimony, that there are not sufficient moneys to carry out all of the requirements that EPA has put on our States.

And no matter how much we agree that they need to be done or should be done, moneys are just not there and they are not going to be there in the next 6 months or year. So we have to think in terms of common sense, back up a little bit perhaps, and I say this to you in the same spirit I said to the previous panel, be a constructive player. Listen to all sides. Don't necessarily set yourself in concrete, particularly where moneys are required.

If the moneys are not there, we could require it all day. But if the moneys are not going to be there, we have to establish a common sense approach to it so that we can attract the necessary funds to do that which we all agree might be in the long run best interest for all of us.

Reentry, for example, if it is a fact, and one of the witnesses stated that in 15 years, there has not been a single documented case of a health problem concerning reentry for irrigation purposes in certain areas, and I don't quarrel with that. You perhaps do.

But I would caution anybody to make an absolute statement of that nature. I think you would agree, and Mr. Johnson, you were smiling at that comment. But would you not agree that in certain instances with certain chemicals that a 24-hour waiting period may not be necessary and some days it might take 2 or 3 days and in some cases once the chemical has dried sufficiently, that individuals may move safely into the field?

Mr. JOHNSTON. Frankly, the reason I smiled, the key word in his statement is documented, is what happened with Mr. Mendoza's crew has happened in lots and lots of places, but it is not necessarily documented for purposes of the Arizona Department of Agriculture or the Congress, because it happened to the workers, but unless they have the training and the knowledge to know what was strayed and to have some understanding of pesticide impact, they don't understand what happened to them.

There are some pesticides where it is appropriate to have 3 day or 24-hour reentry, but it provides for people to reenter even within that period to do certain kinds of work. I agree with you. That is appropriate. But the current WPS provides for that.

Mr. STENHOLM. I am sorry, we have a vote and I don't have anybody to turn this over to. So rather than have you wait, I will turn you loose. We thank you very much for your testimony. We look forward to working with you and all parties concerned in a successful, safe culmination and solution to the problems that brought us here today.

Thank you very much for your being here. We will stand in recess for approximately 15 minutes.

[Recess taken.]

Mr. STENHOLM. The subcommittee will again come to order. We will hear from panel 5, the first witness, Mr. Bobby Carson.

STATEMENT OF ROBERT A. CARSON, JR., PRODUCER, ON BEHALF OF THE NATIONAL COTTON COUNCIL OF AMERICA

Mr. CARSON. Thank you, Mr. Chairman. My name is Robert A. Carson, Jr., and I am a cotton producer from Marks, Mississippi and a member of the National Cotton Council's Task Force on Environmental Issues.

I am presenting this statement on behalf of the National Cotton Council, the central trade organization of the U.S. cotton industry.

We appreciate the opportunity to present our views on the worker protection standards. To facilitate the hearing schedule, I would like to highlight the main points of my testimony, and ask that the full text be submitted for the record.

Mr. STENHOLM. The chairman will be grateful for your summary, as will each of the other witnesses, and your entire written statement will be made a part of the record.

Mr. CARSON. As background, the National Cotton Council has been a major player in the worker negotiations and standards. We were part of a 25-member regulatory negotiation advisory committee formed by EPA in 1985 to develop revisions to the standards.

During our involvement with this committee, the council felt it was having constructive input and the group was making headway on difficult issues. The committee draft version of the standards, published for comment in 1988, was generally acceptable to the cotton industry.

At that point, negotiations ceased and moved behind the closed doors of EPA. EPA worked alone and published a final rule in August of 1992, which was significantly changed from the earlier version. The final regulations and its 140 page "How To Comply" manual are quite complex and include numerous rules for complying with the standard.

This hearing gives us the opportunity again to formally offer our input on these regulations, although we realize that the regulation is already a final rule. Advances in application technology and equipment design and the move to safer products have greatly reduced the risk of exposure to cotton production employees.

Most employers stress the importance of overall farm safety, including safe handling and application of pesticides. For example, I am in my cotton fields everyday, and all of my employees are trained as certified applicators and operate tractors with closed cabs. Some of the worker protection standards regulations are unnecessary, impractical, too complex, too specific, and too costly to implement and difficult to regulate.

For example, rules restricting reentry to treated fields for lengthy periods interfere with care of the crop, particularly irrigation. Requirements for personal protection equipment could pose a serious health risk to farmworkers due to heat exhaustion from the typical 90 to 100 degree temperatures in the Mississippi Delta cotton fields.

In this case, the cure is more dangerous than the problem.

Now, let me address three of our specific concerns in more detail. One relates to restricted reentry intervals, the second requests the need for an allowance for incidental short-term contact, and the third relates to the use of personal protective equipment in summertime heat.

We are seeking either exceptions or favorable interpretive guidance from EPA on these issues. About 40 percent of the cotton in the Midsouth is supplied with supplemental irrigation and all western agriculture is irrigated.

Irrigation activities usually coincide with the use of category I and category II products with 24- to 48-hour reentry levels. However, the worker protection standards provide that, while a reentry interval is in effect, the workers are only allowed a total of 1 hour per 24-hour period, and full personal protective equipment is required for early entry.

Critics would argue that irrigation and spraying should be scheduled to avoid early entry hand labor for irrigation. While this is done to the extent possible, more often than not, insects and water requirements dictate schedules during the summer months.

The artificial barrier of 1 hour per day may not meet the critical operational requirements by workers during the irrigation period. Additionally, the requirements for extensive personal protection equipment is excessive and impractical in our opinion. Regulations concerning irrigation workers are top priority because we feel that present rules, as we understand them, are clearly not functional.

Since there is only limited contact with treated surfaces, a more reasonable protective clothing requirement and an allowance for longer access time would address a problem area that we have identified. Another example of problems associated with reentry levels are situations where short-term incidental contact may occur.

We do not believe current regulations address these circumstances. One example of a problem of excessive interpretation of the standard is the need for a tractor operator to enter treated fields during combination pesticide/cultivation operations which would be within the reentry period.

Depending upon the product being applied, current regulations would require this tractor operator to put on extra protective equipment such as coveralls, gloves, and possibly a respirator, dismount the tractor, make the necessary adjustments or checks, and reenter the tractor after removing the extra garments and equipment.

All of this effort would be required for a task that may otherwise have taken only minutes.

Rather than be required to put on extensive personal protection equipment as called for in the regulation, a more reasonable alternative could be a requirement for gloves, boots, and perhaps an apron. These adaptations, along with the decontamination equipment required—which could be as basic as a container of clean water, soap, and paper towels—would provide adequate protection for the worker and yet be as practical to the application.

As pointed out in this statement, we view some of the current regulations as too restrictive while others counter that they do not go far enough. While we support the goals of the worker protection

standards—to protect workers from occupational exposure to pesticides, we must express concern about the ever increasing regulatory burden being placed on production agriculture in the United States.

Although not the intended affect of these regulations, many agricultural employers are concerned about the potential for increased and unfounded lawsuits from disgruntled employees for alleged noncompliance to these standards.

Also in consideration of all the requirements for education, training, and learning how to live with these new complex regulations on the farm, we concur with previous witnesses that the full implementation, that is enforcement, should be delayed until October of 1995. This is the date that all of the 8,000 to 10,000 products will have the correct labels.

It is also critical that EPA continue to cooperate with agriculture to ensure that compliance is feasible and enforcement is fair and adequate funding is in place to properly implement these standards.

The key to compliance with these regulations and adequate protection for the workforce is effective communication with EPA and State regulatory agencies. We have discussed these and other points with EPA prior to this hearing, and commend the agency for its willingness to get a better understanding of production agriculture.

We hosted a meeting with EPA officials this past August in Stoneville, Mississippi where numerous questions were raised and actual field and aerial application operations were observed. We also continue our dialog with State officials who will be charged with enforcement.

It is our intention to continue communication with both groups to press our concerns and the need for practical solutions.

In summary, we ask this committee to also consider the farmers of this country when the implications of worker protective standards are calculated. We urge Congress to stress the importance of cooperation by EPA with production agriculture in finding practical methods to meeting these new regulations.

Again, we thank you for the opportunity to present our views on the worker protection standards, and we applaud your efforts to examine these regulations and its effect on U.S. agriculture.

Thank you, sir.

[The prepared statement of Mr. Carson appears at the conclusion of the hearing.]

Mr. STENHOLM. Thank you.

Next, Mr. Smith.

STATEMENT OF GEORGE SMITH, RETAIL DEALER, ON BEHALF OF THE AGRICULTURAL RETAILERS ASSOCIATION

Mr. G. SMITH. Hello, my name is George Smith, I operate four fertilizer production plants, and also serve as a retailer dealer for crop protection chemicals, seed, and animal feed in Keenes, Illinois.

Thank you for this opportunity for me to express the Ag Retailer Association's concerns regarding EPA's worker protection standard.

The Agricultural Retailers Association represents over 6,000 farm supply retail outlets like mine across the United States and

over 80 percent of the retail sales of fertilizers and crop protection chemicals in the United States. These retail outlets are often the primary source of information for farmers and other pesticide applicators.

Also, many of these retail dealers are themselves custom pesticide applicators. ARA's members are, therefore, directly affected by these regulations.

ARA largely supports EPA's efforts to ensure the safe use of pesticides and protection of farmworkers and handlers. Clear, practical, worker protection guidelines are long overdue, particularly for farm employees working in labor-intensive crops such as fruit, vegetable, and others that require multiple applications of insecticides and other pesticides.

ARA has had several opportunities to provide information and voice its concerns about the worker protection standard and guidance documents to EPA during the last year, but only after the final regulation was issued.

ARA is pleased with many provisions of the EPA's worker protection standard, particularly options for labeling products already in channels of trade. ARA is also pleased with EPA's decision to provide pesticide applicators with the choice between notifying workers and employees orally or with posted signs.

Furthermore, we believe that EPA's decision to require posted warnings signs is reasonable for all pesticides with active ingredients classified in toxicity category I.

And I want to emphasize that, the category I.

However, ARA members do have several concerns about the final version of the worker protection standard and its recently released guidance documents. ARA's concerns are largely based on EPA's procedure and schedule, the scope of the worker protection regulations, and the increasing burden of duplicative Federal and State worker safety training programs.

Regarding EPA's implementation procedure and schedule, retail dealers object to EPA's inflexibility in establishing regulatory deadlines despite the agency's inability to meet its own deadlines for providing guidance documents and other materials necessary for training and compliance with the worker protection standard.

The worker protection standard final rule required revived labeling on all products sold or distributed by registrants after April 21, 1994. It requires revised labeling on all products remaining in the channels of trade after October 23, 1995.

These regulatory deadlines seemed achievable at that time; however, EPA's detailed guidance for revised labeling was delayed by almost 6 months until April 1993, with additional clarifications issued in August of 1993.

ARA believes that this delay has hampered registrants' ability to amend the labels, which will subsequently increase the relabeling burden of the worker protection standard on retail dealers.

Concerning the scope of the worker protection standard, we believe that many requirements are sometimes so burdensome and in some cases unnecessary, that many farmers and farm employees will disregard all of the worker protection standard requirements, including those requirements that are important and necessary.

We believe this is especially true in the requirements for posting and removing warning signs, and in the requirements for certain personal protective equipment.

The worker protection standard requires applicators to post warning signs prior to the application of certain pesticides, and these signs must then be removed within 3 days after the end of the prescribed reentry interval.

The sign currently prescribed by the standard does not provide information on the date of the pesticide's application or the date of safe reentry. It is clear that the intent of the regulation is to establish that a posted field should not be entered.

However, sign removal on diversified farming with many crops and on large farm operations is time consuming and burdensome. ARA believes that the requirement to remove signs is impractical, and with minor modifications to the text of the sign, removal within 3 days would be unnecessary.

We encourage EPA to modify the format of the required signs to explicitly state the reentry interval specific to that field. The standard format for the sign as purchased could include two blank lines for the date of the pesticide application and the date of the safe reentry.

For example, if a field was treated today, November 10, with a pesticide with a 72-hour reentry interval, the sign could warn workers that the field was treated today and should not be entered until after November 13. After the reentry interval has passed, the timing of the removal of the warning sign is no longer of consequence.

Without listed dates, workers must assume that the field is unsafe until all signs are removed. This assumption is made assuming strict adherence to sign posting requirements by their employers, however, if their employer does not strictly adhere to the requirements of the standard, there is no safe or standard way to interpret these signs.

A generic sign with blank lines is as economical and more practical than the sign prescribed by the EPA, and it is safer because it cannot be easily misinterpreted.

ARA is similarly concerned that the requirement for personal protective equipment may be too extensive. Because minimum personal protective equipment, such as coveralls and chemical resistant gloves are required for all pesticides, including less hazardous pesticides in toxicity categories III and IV, farmworkers may disregard personal protective equipment requirements altogether.

Such disregard will almost be the rule in the case of protective coveralls, particularly during conditions of extreme heat. Over-protective and unnecessary warnings and requirements will compromise needed warnings and requirements that are important and necessary.

ARA believes EPA should encourage overprotection, but not require overprotection.

Finally, ARA is very concerned about the increasing burden of overlapping worker safety training requirements. EPA's worker protection standard has many provisions already required by OSHA, hazard communications requirements, and Department of Transportation HAZMAT requirements.

All of these worker safety regulations have independent training requirements with different certification or retraining requirements, such training requirements and costs have tripled during the last few years.

While EPA has addressed some of the overlapping and conflicting requirements of the worker protection standard and OSHA hazard communication regulations, the regulated industry has not seen suitably similar correlations to other worker safety regulations.

The regulated community supports efforts to protect their employees and other workers. Furthermore, the regulated community wishes to do business in full compliance with all Federal laws.

However, the duplicative requirements of different agencies are very burdensome, they make compliance very difficult and confusing, and they reflect an absence of interagency communication. This lack of communication greatly detracts from the underlying purpose and intent of the worker protection regulations.

In summary, ARA encourages EPA to recognize the increasing relabeling and training burdens on retail dealers and provide for appropriate schedule flexibility and assistance.

Similarly, we encourage EPA to consider minor modifications to the prescribed warning signs and requirements for personal protective equipment to ensure safety and the highest rate of compliance.

In closing, I want to repeat that the members of the Agricultural Retailers Association support EPA's efforts to ensure the safe use of pesticides and protect farmworkers. We believe the concerns that we have presented and the changes that we have suggested will lead to a more functional and protective worker protection program.

ARA is grateful for this opportunity to share its concerns with this committee, and we appreciate your efforts to develop a more workable and protective worker protection plan.

Thank you.

[The prepared statement of Mr. Smith appears at the conclusion of the hearing.]

Mr. STENHOLM. Next, Mr. Dorsey.

STATEMENT OF TUPPER H. DORSEY, PRODUCER, ON BEHALF OF THE NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS

Mr. DORSEY. Thank you. I appreciate this opportunity to testify on behalf of the National Council of Agricultural Employers.

My name is Tupper Dorsey and I am vice president of Moore & Dorsey, a fruit, vegetable, and horticultural farming operation in Berryville, Virginia. I am a member of the NCAE's board of directors and executive committee, and serve as director of the council's OSHA committee based in Washington, DC.

NCAE is the only national organization representing growers, cooperatives, and agricultural organizations exclusively on farm labor issues. Nationwide the council represents employers who hire 75 percent of the farm workforce.

Agricultural employers are very concerned about the working and living conditions of farmworkers. We commend the subcommittee for exploring the EPA's implementation of the worker protection standards for agricultural pesticides.

Regretfully, after extensively revised final standards were issued, no further comment period was allowed. An additional comment period would have improved the published regulations.

Nevertheless, NCAE is pleased that the EPA has involved the council and other grower representatives, farmworker advocates and the responsible Government agencies in the implementation process. This opportunity for involvement, however, has been very limited for growers—allowing us to come in at the tail-end of the approval process for the “How To Comply” manual and other educational materials.

Agricultural employers and commodity groups are highly concerned because very little effort has been made to educate growers on their responsibilities under the new worker protection standards. Much of the implementation focus of the EPA has centered on the worker/handler safety training components of the WPS.

The council agrees that safety training for farm workers is important, but more emphasis needs to be given to educating the farmers on all aspects of the WPS so that a safe work environment can be maintained.

The training verification process is still not finalized. We are still 5 short months away from the effective date for the training requirements. Agricultural operations will be hard pressed to find training-verified workers.

Since agricultural employers are ultimately responsible for ensuring that the training is given, a concerted effort needs to be made to educate growers on how to train the workers. Due to the lack of time remaining before the standard becomes fully effective, and due to the complexity of trying to train large numbers of workers hired on a daily basis, the 15-day grace period for safety training will be very important to growers.

By having the grace period, agricultural employers will be able to set up weekly or biweekly training sessions instead of daily sessions. NCAE, in conjunction with the Committee for Farmworker Programs this year worked to have added to the Departments of Veterans Affairs and Housing and Urban Development and independent agencies appropriation bill—1994 language encouraging EPA to provide education and training to farmworkers and agricultural employers.

This training would be authorized under the National Environmental Education Act and the Federal Insecticide, Fungicide, and Rodenticide Act. Funds for this education and training however were not specified by Congress. EPA is again telling the agricultural employers that no funds are available for the education of growers.

The council requests that Congress make changes to FIFRA specifically authorizing EPA to institute an educational grant program to provide grants to agricultural associations, along with the Cooperative Extension Service, as currently authorized, in order to effectively educate growers on their responsibilities and obligations under the WPS.

Funded training programs should be limited to the safety training requirements of WPS. To go beyond pesticide safety in these training programs would only serve to dilute the importance of the training.

NCAE is also concerned with the mechanism EPA set up for allowing exceptions to the return entry intervals. Comments were accepted on this mechanism during the fall of last year, but they were accepted without the intention of making any changes to the process.

This process is so onerous that few farming operations will be able to obtain exceptions. The final rule establishes REI's from 12 to 48 hours for any products which do not have a previously established entry interval. There are several instances where generic, permanent and, interim REI's of this length or longer will pose problems for growers prohibited by such REI's from performing routine hand labor tasks.

EPA has provided for an exception to the prohibition of hand labor tasks during the REI's for the cut flower industry. Such a re-entry provision permitting necessary tasks where personal protective equipment is utilized would also be appropriate for other crops where a strict prohibition would adversely affect the industry.

As demonstrated in the DPRA study, problems most often will arise in situations where there are multiple harvests over a short period of time. Examples like the harvesting of strawberries, cherry tomatoes, tomatoes, and cucumbers. Also, as pointed out to the subcommittee earlier, an exception is needed for irrigation activities during the REI which typically take longer to perform than the 1 hour provided for in the rule.

The procedure set up for exceptions to REI requires agricultural groups to provide detailed economic and technical data for not only the product and the practice for which the exception is being requested, but for all the alternative practices.

Many agriculture groups do not have the economic or technical resources to provide this type of detailed data. The exception mechanism could better serve the public if EPA provided for an application procedure whereby grower groups could simply request an exception from the REI restrictions and have EPA consult with the U.S. Department of Agriculture as to the appropriateness of the exception.

In conclusion, the larger agricultural employers are able to hire human resources professionals to keep track of the myriad of labor laws which apply to agriculture. The smaller employers cannot, and, therefore, have to fight an uphill battle to be kept up-to-date on not only all aspects of production, marketing, distribution, and trade issues, but also their obligations under the labor laws and the regulations.

These growers would greatly benefit, and farmworkers would benefit from an orchestrated effort at the Federal level to keep growers abreast of these statutory requirements. An educational grant program would go far to ensuring that growers are in compliance.

Enforcement actions are only effective after the harm has been done. Educational efforts would help to prevent the harm in the first place. And, compliance with the WPS will be more workable if an effective mechanism could be developed for obtaining exceptions to the REI's where necessary, but, again, keep in mind that many farmers and ag organizations do not have the resources available to provide detailed feasibility and safety data.

This information is already on hand at the EPA and USDA.
Thank you for your time.

[The prepared statement of Mr. Dorsey appears at the conclusion of the hearing.]

Mr. STENHOLM. Thank you.
Next, Mr. Wildman.

STATEMENT OF RICHARD WILDMAN, TREASURER, NATIONAL ALLIANCE FOR INDEPENDENT CROP CONSULTANTS

Mr. WILDMAN. Thank you for the opportunity to appear here today.

I am Richard Wildman. I am a crop consultant. I am here as a representative of the National Alliance of Independent Crop Consultants.

Let me begin by explaining what the National Alliance of Independent Crop Consultants is. It has been established since the mid-1970's. It is the organization that represents the profession of independent crop consulting in the United States.

What is an independent crop consultant? We are the practitioners that implement IPM and nutrient management plans on farms. We come from many disciplines: weed science, plant pathology, entomology, agronomy, or horticulture. We work across all of those disciplines on our clients' farms to implement crop production techniques and systems.

We are a key source of the implementation of the integrated pest management programs on farms. Our members are consultants that work with fruitgrowers, processing and fresh market vegetable growers, and grain farms; basically all types of agricultural producers.

Recently, in October, a publication outlining the worker protection standards for crop advisors was distributed by EPA. After reviewing it, we have begun to develop a dialogue with EPA. In the past, our profession has had very little response or opportunity to input on these standards.

As of very recently, we have begun to have some input, and so we are cautiously optimistic that we can impact some positive changes to the standards.

As we look at the standards for crop advisors as they exist today, our members have some very serious concerns in terms of applicability.

And as you have heard today, there has been many allusions to the problems that practicing consultants will experience under the current version of the WPS.

In a nutshell, as professional crop advisors we understand pesticides and chemicals as they react in the field. It is our business to understand the toxicology of those materials. We ask that we have some input with EPA in how we go out and practice our profession, both because of our understanding and because of the many constraints that you have heard about today in terms of the need for IPM practitioners to be in the field.

Because of the need of many different types of cropping systems that occur in this country, for example, corn to fruit to stake tomatoes, have different production schemes and monitoring systems, and very different economies of pest management. A field corn pro-

ducer has a very small portion of the production budget that is allocated to integrated pest management programs, whereas a higher value crop, that budget will be larger.

Inherently in our business, we adapt our monitoring systems to the economics of the crop grown. And much of that is tied back to the quantity and cost of pesticides that are used, the safety of those materials, the severity of insect problems.

We need that same common sense approach applied by EPA when it comes to worker protection standards on differing crops.

I would like to point out a couple of areas that raise concerns in reviewing the standards.

One, to our knowledge, the FIFRA scientific advisory panel did not review these standards.

Another issue that concerns us is that, according to a review of the Federal Register, the regulations are targeted for vegetable and fruit crops which use high hand labor. As I alluded to, they may not fit the row crop or agronomic crop systems that many of our members work with.

Despite the law, EPA has not performed an economic impact analysis on small firm independent crop consultants. Many of our members have less than 15 employees. Many have one or two employees.

It is that, from our perspective, that there will be some significant price changes if we need to pass on these costs to our clients. There is definitely an opinion and concern with those increased price changes there will be a reduced adoption of IPM. In terms of re-entry intervals; we look at "when dry" standards for re-entry of crop practitioners, for many of the safer pesticides. There are many situations where IPM as it is practiced today would not be practical under the current WPS.

An example would be in the Corn Belt in terms of monitoring of pests where, during the early life of the corn, June, July, the many fields that a scout would be going into, a certain portion of those would have had some sort of caution-type pesticides applied to them at any given time. This would require, based on the current standards, that a scout wear protective clothing just about every day for the months of June and July and an awful lot of days in the remainder of the summer, when there is, in fact, very little risk of exposure to the worker.

It is this type of example—where broad standards may not fit that role when it comes down to a specific practice on a given crop. Our concern is that even though the scope of worker protection standards for crop advisers is small in comparison to all the other concerns that we have heard about today. It is very key to our industry. I think it is very key to the adoption of IPM, and it deserves attention.

Again, I am cautiously optimistic that we are on the road to a very good dialog with EPA and will see some changes in the near future.

Thank you.

Mr. STENHOLM. Thank you. Next, Ms. Tunis.

STATEMENT OF SHELLY A. TUNIS, ATTORNEY, YUMA VEGETABLE SHIPPERS ASSOCIATION

Ms. TUNIS. I am Shelly Tunis, an attorney who represents the Yuma Vegetable Shippers Association.

Members of the association grow, pack, and ship approximately 60,000 acres of vegetables during September through April from the area surrounding Yuma, Arizona.

During the winter months, Yuma is a primary source of iceberg lettuce for the people of the United States. And they also supply many of the other fresh vegetables to the people in the United States.

Our members are deeply committed to the safety of their workers. Furthermore, our members are regulated by Arizona's pesticide worker safety program. Our members believe the Federal worker protection standards will eviscerate the effective and economically viable standards set by the State of Arizona.

You have already heard testimony today concerning problems with re-entry vegetables, personal protective equipment, notification, irrigation, heat-related illnesses, and other topics. Our members also have concerns on these topics. However, I believe these topics have been sufficiently addressed.

The section of the worker protection standard that I would like to focus on requires a farmer to provide a decontamination facility for any worker who performs any activity in an area where a pesticide has been applied within the last 30 days.

The decontamination facility must include enough water for routine washing and sufficient quantities of soap and single-use towels. And the decontamination facility must be located not more than one-quarter mile from where the worker is working.

Yuma vegetable shippers believe this requirement has numerous ramifications. It is not that our members do not believe in decontamination facilities. It is that this standard is overreaching.

For example, a farmer makes a pesticide application on day 1. On days 6 through 20, the field is harvested and the vegetables are sent across the country for marketing. On day 27, a worker is sent to remove the remains of the field. The worker has some contact with the plants that were treated on day 1. The farmer must, therefore, provide a decontamination facility to the worker even though the people across the United States have been eating the vegetables for over 2 weeks. This does not make sense to Yuma farmers.

Farmers are very concerned this provision may lead to widespread fears about the safety of fruits and vegetables. Farmers also believe that there is no scientific basis for this standard. Vegetable farmers who track pesticide residues say the residues do not persist. The pesticides have degraded into harmless compounds well before the expiration of a 30-day period.

Moreover, in the explanation to the worker protection standards published in the Federal Register on August 21, 1992, it states: "As part of a pesticide hazard assessment project funded by EPA in 1985, a computer model was developed to estimate how long hazardous residues might persist. For one of the pesticides studied, the hazard was predicted to remain 30 days after the re-entry had expired."

What if the farmers never apply that one pesticide? Why must they provide a costly decontamination facility? This standard for decontamination facilities, as written, will add relatively little to the safety of workers but will significantly increase the costs of producing a crop as well as increasing the anxieties of consumers.

In conclusion, farmers do not know how they will be able to comply with the worker protection standards. Many farmers believe they have the option of going out of business or breaking the law. This statement should not be taken lightly.

Yuma farmers are very proud of providing quality fresh vegetables for the people of the United States, and they are law-abiding citizens who do not enjoy the notion of breaking the law.

When I asked one farmer his three major concerns with the EPA worker protection standards, he replied: "One, that the law will become effective; two, that the law will actually be enforced; and, three, where am I going to find another job at my age?"

His statement concisely expresses similar fears of his colleagues. There must be modifications to the present EPA worker protection standards to make them cost-effective, beneficial, and enforceable.

Thank you, Mr. Chairman, for this opportunity to share a concern of the members of the Yuma Vegetable Shippers Association with this subcommittee.

[The prepared statement of Ms. Tunis appears at the conclusion of the hearing.]

Mr. STENHOLM. Next, Ms. Whitley.

STATEMENT OF ELIZABETH D. WHITLEY, DIRECTOR, GOVERNMENTAL RELATIONS, AMERICAN FARM BUREAU FEDERATION

Ms. WHITLEY. I am director of government relations at the American Farm Bureau Federation in the Washington office. We appreciate the opportunity to comment on these new EPA regulations; and we commend you, Mr. Chairman, and the subcommittee because many of the concerns we heard today from both the workers and growers have persisted for a long time. I think it is timely to examine the subject.

Let me say in preface to my statement, we do support the intent and nature of these regulations. We worked with EPA since before the negotiated rulemaking in 1985 and 1986 to arrive at a workable solution to what is a very Gordian problem.

Having said that, Farm Bureau is very concerned about costly and burdensome regulations for farmers. We expect increased workers' compensation claims. We worry about EPA's vague allusions to long-term health implications because that presents a liability problem for farmers which is essentially uninsurable.

Last, we feel in large part EPA has failed to justify both the exposure data and the cost data. I think we have been able to get a feel of that today from the wide variation of anecdotes and claims made.

As I mentioned, we were involved with EPA in the promulgation of this regulation back in the mid-1980's. We were also involved with USDA in its analysis of the regulations. In fact, USDA's objections were part of the reason the regulations took so long.

In March of 1992, USDA published comments critical of EPA and mentioned issues that should be addressed. Those include, from our standpoint, two very important points.

First, from the regulatory impact analysis statement, the estimated costs and anticipated benefits do not appear to be sustainable.

Second, the number of farmworkers which EPA estimated would be affected is grossly inflated. EPA used the figure of over 300,000. We believe fully—and USDA's analysis bore out—the assessments were significantly below that, somewhere in the 12,000 number perhaps.

In fact, I have attached a copy of the USDA's Federal Register notice to my formal statement. I ask that that be included in the record as well.

Second, let me mention again worker protection standards impose extensive and very expensive compliance burdens on agricultural employers.

I would like to second Ms. Tunis' comments just made regarding the decontamination facility requirement. That is one of dozens and dozens of similar requirements in these regulations which will be very difficult for all farmers to comply with.

Of course, these regulations apply where one nonfamily farm employee is concerned. There is no small farmer exemption in this regulation.

I think the committee should look at a small farmer exemption. Farm Bureau would support changing the standard to the OSHA standard which prohibits OSHA from enforcing its regulations on farms with 10 or fewer employees. That might bring a measure of reasonableness to the standard.

Farmers will not knowingly or carelessly expose their employees to an unsafe situation. They do not expose their family members and themselves to that right now.

Mr. Stenholm, you mentioned just that mindset among farmers. I would second it. I think it is an accurate assessment.

EPA has argued that, as a practical matter, enforcement probably will not be a major factor on small farms. That is a very risky road to travel. Making that assumption is very dangerous. Usually various interests groups argue when a Federal agency cannot or is unwilling to enforce a standard that a private right of action be included to permit individuals to enforce that standard on their own behalf.

That is a devastating thing to contemplate. Let me illustrate for you a little bit of the problem my industry has with a similar private right of action. I know Mr. Stenholm has heard this before. This is not new.

We have a standard called the Migrant and Seasonal Agricultural Worker Protection Act [MSPA] which deals narrowly with housing, transportation, and payroll recordkeeping and provision of wages. It is an excellent statute. I don't quibble with it.

However, it contains a private right of action which has been devastating in my industry. Worker lawsuits have resulted in farmer bankruptcies around the country. Many of those lawsuits are brought on very technical, minor issues which do not treat actual worker injury.

MSPA is a very narrow standard compared to these EPA regulations. These regulations are so complex, so vast and so far-reaching that it would be a litigation bonanza if a private right of action was attached to it, not to mention the fact that these types of lawsuits are frequently used to define and expand the scope of the regulations.

It is not fair for Congress and Federal agencies to enact standards and then choose not to provide the resources to enforce them. In effect, this forces private parties; farmers, in this instance, to pay to enforce it on behalf of the Federal Government.

To be candid, if Congress is going to enact these kind of laws, they need to provide the resources for the agencies to enforce them. We far prefer the enforcement efforts of trained, evenhanded Federal officials over what we call the litigation lotto mentality in private rights of action lawsuits.

Protecting workers from pesticide exposure is very important. When I travel around the country and talk to farmers, the farm-workers, and even union people, I find a surprising degree of compliance with certain aspects of the kind of proposal that EPA has put out.

I think largely farmers are doing a pretty good job of protecting their workers as it is right now. But I am not suggesting that they are in compliance with this very complicated standard. They are not. They cannot be for a variety of practical reasons. It would be impossible to be in complete compliance with this standard all the time. I think Congress needs to look into a formalized employer training and compliance program of the type we heard talked about earlier today.

Let me say before I finish, we also endorse NASDA's request to push the enforcement date back to October of 1995 for one very practical reason. If all the labels on all the compounds are in compliance with the standard, it will be much easier for farmers to know what to do. Right now, next April, when this regular technicality will be enforced, the farmer may have two packages of the identical compound in the shed and he will be legally required to do two very different things to protect his workers as a consequence. That doesn't make any sense. This regulation is going to be complicated enough as it is. We should put the farmers in the position to know what they have to do with one single course of action.

Again, let me say AFBF appreciates your holding these hearings on this important issue for a variety of reasons. It is important from a practical, human standpoint; it is important from a cost-benefit standpoint. I think we need to look at it very hard.

Mr. Chairman, there are a number of State farm bureaus that expressed serious interest in submitting comments for your hearing record. As they can come in, if I may forward those on, I would appreciate it.

In fact, I have two with me today from Hawaii, both the Hawaii Farm Bureau and the Hawaii Sugar Planters Association. The Hawaii Sugar Planters Association is a joint statement between the association and their workers union which are jointly very concerned about the implementation of this on the islands in Hawaii.

Thank you very much.

[The prepared statement of Ms. Whitley appears at the conclusion of the hearing.]

Mr. STENHOLM. Mr. Smith.

Mr. SMITH of Oregon. No questions.

Mr. STENHOLM. I am curious in listening to each of your testimonies. Has there ever been an effort made by your individual organizations or collectively to sit down and draft the rules and regulations of worker safety that you would like to see complied with? Has that ever been done?

Ms. WHITLEY. May I answer that, Mr. Chairman?

Mr. STENHOLM. Surely.

Ms. WHITLEY. I actually was a party to the negotiated rule-making in 1985 and 1986. EPA had a proposal on the table at that time. We worked long and hard with our own variations; but, frankly, the opportunity to produce our own proposal was extremely limited if not nonexistent at the time, I would say.

If there is anyone else here who was party to that negotiation at the time, they may have a different impression. But, frankly, I don't think it was ever really an opportunity for us.

Mr. STENHOLM. I was asking more or less in the spirit of all of your testimony. We all say and, sincerely mean it, that worker safety, safe handling of pesticides is foremost on all of our minds. We say that; we mean it.

But then we get in to always objecting to the rules and regulations that EPA promulgates or that someone suggests that we do.

So the thought just crossed my mind, and I don't recall as a farmer ever participating in an exercise of this nature, in which you sat down and said, if I were doing it, how would I do it.

Now, admittedly, a lot of farmers would say, I wouldn't do it; we do not need to do it, which in these days and times is absolutely ridiculous. Then you do get into private rights of action, lawsuits, a host of things that can and will occur. And most producers understand that today.

Mr. Carson.

Mr. CARSON. Mr. Chairman, it was stated earlier, when this process, prior to 1988, the National Cotton Council, working with small groups of producers, had input into this process and was satisfied with it when it went to EPA. When it came out of EPA in 1992, it was completely different and unacceptable to the cotton industry.

But in answer to your question, prior to 1988, the cotton industry, through small focus groups, local certified producer organizations, did have input into this process.

Mr. STENHOLM. What would be the best way, in your judgment, to create an educational program for purposes of educating employees as to how to handle the various chemicals and to understand the hazards associated, the re-entry period times? What would be the best way, just off the top of your head, to provide that kind of information to those people that worked for you?

Mr. Carson.

Mr. CARSON. What is happening in the State of Mississippi—and I think members of EPA can testify to this—that the Mississippi State Extension Service is going through the process now, extensive training to train the trainers and to train the farmers.

Mr. STENHOLM. What about the farmworkers?

Mr. CARSON. That would be the responsibility of the farmers to train the farmworkers. That would be my obligation as a producer. That process is, like I say, in the process now, and Mississippi is doing an excellent job at getting prepared to train the trainers, to train me where I can train my employees.

Mr. STENHOLM. Mr. Dorsey.

Mr. DORSEY. I would say in Virginia, it mirrors Mississippi. The Extension Service is very active as far as training the year-round people. Those are the people in our operation which are more often exposed to the chemicals as mixers, handlers, applicators.

As far as the migrant workers, the seasonal workers, I would say the same thing. I am speaking now as Mr. Dorsey, a farmer, that it is going to be up to us, just as when the man comes in and we do the I-9 application and—the general hiring procedure. Part of that would also be we are now going to have a training session.

That is how I envision it right now.

Mr. CARSON. Mr. Stenholm, let me say something.

Training, I think, is not going to be a problem from a producer standpoint. I think the problem is some of the things we mentioned, some of the standards that are nonworkable, nonpractical. But I think training is not going to be a major problem when the worker protection standards are implemented.

I know from a cotton producers' standpoint they will not be.

Ms. WHITLEY. Mr. Stenholm, it is a difficult question you pose. One of the things the industry argued early on in this entire process with the EPA was that, given the basic lack of data EPA had, they could not quantify what kind of exposures there were, where they were occurring, what the particular compounds were that produced most of the exposure incidents.

It is hard to shape an adequate response when there is a lack of basic data. For that reason, the industry argued frequently for more of a framework of guidelines for States to follow so that it would have been easy for a State to shape a program that would adequately protect worker health and safety given the unique growing conditions, crops, growing seasons, and chemicals used in that State.

So, a framework or guidelines would be the place to start. Another place is the person who stands in the place of the employer of the farmworkers. That can be a variety of individuals, as you know. Sometimes it is the farmer-producer himself. Sometimes it is a farm labor contractor. In some cases when the farmer has very little employment but uses independent crop consultants, it is the crop consultant who would be in the position of employer.

So, the person who stands in the role of employer should be the trainer of the workers, even if a new employer mandate is a somewhat revolutionary position for us to take. But, if you really want to talk about getting the job done accurately, the first place of contact with the worker is at the employer level.

I am not saying that other groups should be precluded from training; but if the employer is encouraged to understand his responsibilities under the law and provided a basic level of protection from arbitrary enforcement and litigation exposure, that is where you will get your greatest degree of compliance.

Mr. STENHOLM. I must tell you that all of your answers, from a farmer's standpoint, leave a little to be desired in the world we have today.

I think we will have to work on that a little bit because—how do we handle the farmers that really do not want to fool with it, that really, honestly do not want to spend the extra time making certain that that seasonal worker who may or may not be productive, who may just be showing up and may not be there tomorrow, that you develop the proper attitude to give the proper training under those circumstances?

I am not sure how you do that under any circumstances. But that is a liability question that gets right back on the employer mandate side.

If you accept that responsibility, then you really accept that responsibility and all the warts that go with it. That is one of the things that is a little bit troubling to me as we try to grapple for a solution to this. That is why I ask you, from the standpoint of education, how the best way to go about this, realizing, as you say, whether you are talking about category I, II, III, IV, or V safety relative thereof, chemicals we use; just as, Mr. Smith, you mentioned in your testimony, there are some chemicals that must have a much more rigorous training program, period.

And otherwise you are accepting a liability that I think the future is going to be even worse than the present, certainly than the past has been.

Mr. Smith.

Mr. G. SMITH. In Illinois and several of the Midwestern States we already have a regulation in place that we have to be certified to buy these pesticides. If we are certified, we know the toxicity and we know those variables that go with it.

That is already in place in most of the States, as far as knowing the ramifications of it, this whole thing; but we have to be licensed already to buy them as pesticides.

That immediately makes you responsible. The retailer has to see a license before he sells it to that farmer.

Mr. DORSEY. That would be the same in Virginia. In our operation, again, the people actually in contact with the raw chemical, be it mixing, delivering to the orchard site, applying, they are certified pesticide applicators.

In Virginia that is now a 4-hour course. The seasonal workers, they are re-entry workers; but after the elapsed time, that is presently on the label as elapsed, they would—those would get the—really in no case can I see them actually being the applicators and working with the raw material.

So maybe the information they need is not quite as extensive as the people who are dealing with—

Mr. STENHOLM. That is a point that we have to do a good job of emphasizing to the general public. There are differing degrees of toxicity. There are differing degrees of risk. The general categorization of everything in what I call technology in agriculture, when I say there are some that want us to eliminate the use of technology, they make no bones about it. I respect their judgment. Maybe not so much their judgment as their opinion regarding this.

But they are a fact of life. Therefore, as we attempt to maintain or regain the confidence of the consuming public regarding the utilization of this technology, chemicals per se, that we have to be cognizant of what it takes to gain that confidence.

One rotten apple in the barrel ruins it for all of us. It is not an exact science. I don't think there is one of you that would disagree with what I said about Mr. Mendoza's problem earlier this morning. An individual producer that would put a group of workers into those kind of conditions, we used to use a rope for things like that back down in Texas. We kind of chuckle every once in a while here about it, but that is serious and inexcusable.

The educational level, there shouldn't take much to understand that. I may be judging somebody totally wrong in Government. But the example that we hear is one that we have to work on.

We have another vote. We will conclude here. But I gather, Mr. Smith, you seem to be a little more satisfied with the cooperation and at least the communication with EPA. You seem to have indicated that you, your association, have had a little better working relationship than what we heard from our commissioners of agriculture and some of the other witnesses.

Or did I misread you?

Mr. G. SMITH. I believe that is correct. But the fact they have stated to our association that moving the deadline up is imperative to not happen, then I have to think it can't.

Mr. STENHOLM. I hope, as a result of this hearing today, that we will have a little better opening of communications between EPA and each of your individual groups in interest as we heard from all the witnesses today.

I certainly hope all the parties involved in this very important area of worker protection standards will avail yourselves of every opportunity to communicate and try to find the answers. If it does not work out satisfactorily, you can expect that we will hold another hearing to ask all of the parties why it has not worked better than what it has worked up to this point.

We thank you for being here. We look forward to working with you in the days ahead.

This hearing is adjourned.

[Whereupon, at 2:25 p.m., the subcommittee was adjourned, to reconvene, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

DEPUTY MAJORITY WHIP
COMMITTEE ON
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Department Operations and Nutrition Subcommittee

**Review of EPA Worker Protection Standards
for Agricultural Pesticides**

November 10, 1993

Mr. Chairman, Members of the Committee, Thank you very much for allowing me to testify today.

I am here not only as a Member of Congress, but as the son and grandson of farm workers. I also spent some of my early days in the fields of Arizona and California.

I am here to tell you that you and I know the bottom line is, workers need protection from chemical exposure.

I venture to say that no Member of Congress would want to be continually exposed to the levels of chemical risk that agricultural workers are exposed to every day.

I have come here today with a mission. My mission is to convince you that the standards EPA has instituted, regarding worker exposure to pesticides, are not excessive - in fact they are less than the minimum standards that should be established. The EPA standards are ridiculously simple and give much less protection to workers than they are entitled to receive.

So, what are we talking about? What are the standards that EPA has established?

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Number 1) EPA has established a period of time that workers are restricted from entering treated areas. The time interval ranges from 12 to 72 hours depending on toxicity. Does this seem excessive? Would you let your granddaughter enter an orchard that had just been sprayed with a CLASS 1 pesticide like paraquat (one tablespoon of which, in contact with your skin, can kill you)?

Number 2) EPA has established a system to try to "limit" agricultural worker exposure to pesticides. We're not talking about some fancy equipment. We are talking about soap, water and towels. And, we're talking about signs to notify the workers what has just been sprayed on the fields in which they are working. These pesticides cannot be treated lightly - they can cause cancer or harm an individuals reproductive systems. The posted notices would provide critical information so that medical workers can be informed in the event of an emergency.

Again, doesn't that seem like common decency, that the employer would provide water, soap and towels?

Number 3) EPA has established an education system for the workers. Not only would they be given a 20 minute lecture on safety, but they might even be given access to the labels. So, what part of this program doesn't industry understand? What part do they believe is too costly? Is it the poster here? or maybe it's the soap and paper towels?

Mr. Chairman, I'm not trying to make light of a very serious situation. But sometimes I get very angry. The American farm worker has put up with injustice after injustice. As you well know, Mr. Chairman, America has one of the most abundant and cheapest food supplies in the world. Don't you think that the people who help provide that food deserve some decency and some regard for their health?

My very good friend, Cesar Chavez dedicated his life to the hope that the people who are central to our food delivery system would have similar protection to the folks who eat the food. It's real simple, ladies and gentlemen, the Delaney Clause of the Federal Food, Drug and Cosmetics Act of 1958 specifies a cancer risk level of zero for food additives while those in the fields can't get two-ply paper towels. Don't you think that is shameful?

STATEMENT OF
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BEFORE
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COMMITTEE ON AGRICULTURE
U.S. HOUSE OF REPRESENTATIVES

NOVEMBER 10, 1993

I. INTRODUCTION

Good morning. I am Lynn Goldman, Assistant Administrator for EPA's Office of Prevention, Pesticides and Toxic Substances. As a new appointee, I am happy to have the opportunity to discuss efforts that I will be overseeing to protect agricultural workers from the adverse health effects of pesticides. Having worked all my professional life in public health, I care about pesticide issues because I have seen what impact exposure to pesticides can have on health. In addressing this issue several principles put forward by Administrator Browner are useful: pollution prevention -- preventing exposures before farm workers become ill; environmental justice -- addressing risks to income and ethnic groups with the most disadvantaged circumstances in society; and flexibility -- achieving a high standard of environmental protection with a maximum of flexibility.

EPA has an enormous responsibility regarding pesticides regulation generally, and especially a responsibility to protect agricultural workers and farm owners. Recognizing the risks that pesticides can pose to farm workers, EPA must above all assure that these products can be used safely. Further, it is incumbent upon us to find

ways to reduce the overall risks of pesticide use. At the same time, these chemicals have become basic tools in America's abundantly productive agricultural industry, and EPA, in partnership with USDA and the Department of Labor, has a responsibility to find ways for American farmers to use the tools and methods they need to meet America's food and fiber needs.

I will discuss the recently revised national Worker Protection Standard, and how we plan to implement it and evaluate its impacts. I will also discuss plans by the EPA to consider strengthening the Standard in some areas. Finally, I will address the need for pesticide reform legislation to address concerns about pesticide risks.

II. NEED FOR WORKER PROTECTION STANDARD

Millions of people are exposed to pesticide chemicals through their work. Four million members of the agricultural work force are at risk of suffering either direct or accidental exposure to pesticides. These workers include hired persons, unpaid persons (mostly family members), and owners or operators of agricultural establishments. Pesticide handlers mix, load, or apply pesticides. Agricultural workers, who do not handle pesticides directly, may be exposed to pesticides through contact with residues on treated plants, soil, or water, or through accidental exposure from spray drift, or misapplication. Routes of exposure are through inhaling fumes or dust, by skin absorption of pesticide residues, by drift or spills, and by ingesting pesticides from contaminated water, or eating or smoking in work areas. Nationwide there are about 1.66 million pesticide handlers. Approximately 1 million of these

handlers are owners or operators of agricultural establishments; approximately 620,000 are hired to work on agricultural establishments; and approximately 40,000 work for commercial pesticide handling establishments. There are about 2.25 million agricultural workers, of whom about 1.4 million are unpaid (family-member) workers and about 850,000 are hired workers.

As reported in EPA's Regulatory Impact Statement, physicians annually diagnose and report an estimated 20,000 acute pesticide poisoning incidents in the United States, and available evidence indicates that the vast majority of pesticide-related illnesses frequently go unrecognized and often unreported. Pesticide illness reporting is only required in eight states. Little epidemiological evidence is available, but animal studies indicate that a variety of delayed effects, including cancer, developmental, reproductive, neurotoxic and other systemic effects may threaten agricultural workers and their children. These effects are, by their nature, difficult to link to human exposure but are most likely to occur in those with occupational exposure, because they have the greatest exposure.

The economic burden to society from pesticide related illness in agricultural workers is substantial. Implementation of the Worker Protection Standard will help prevent adverse health effects, reduce medical expenditures, increase agricultural worker productivity, and reduce lost work time. Despite lack of comprehensive reporting, data collected by the U.S. Department of Labor indicate that agricultural workers suffer by far the highest rate of chemical-related illness of any occupational

group - about FOUR times greater than the average of all industries. At the same time, the Teamster's Union reports that measures as simple as training programs on precautions against chemical exposure result in a 30% reduction in illness and injury. The 3-M Corporation reported similar results from communication efforts alone. I believe commercial agriculture can achieve similar results.

The new Worker Protection Standard replaced the original Standard issued in 1974. The old Standard was not directly enforceable itself, was not referred to on product labels, and covered only workers on farms. Adverse effects to agricultural workers appeared to continue unabated under them. Knowing that all agricultural employees need better protection, and that the goal is achievable at a relatively low cost, EPA issued its revised Worker Protection Standard in August 1992. The Worker Protection Standard will require changes in the way that American agriculture operates, and we believe these changes can be accomplished at relatively modest cost to agricultural employers. EPA is committed to being reasonable and flexible to minimize these costs. Nonetheless, we believe the protection of the agricultural work force, the segment of the population at greatest risk from the hazards of pesticide exposure, is well worth the cost.

III. WHAT THE NEW STANDARD WILL ACHIEVE

The revised Worker Protection Standard became final in August 1992 and will go into effect, for the most part, in the spring of 1994. To develop the Standard EPA involved all interested parties-- agricultural employees, employers, and State and

Federal interests. Although it was not possible to accommodate all of the wishes of all of the parties in a single standard, the Agency considers the revised Standard to be a great step forward in affording the agricultural work force protection from exposure to pesticides and is economically feasible. First, pesticide handlers and agricultural workers on farms, in forests, nurseries, and greenhouses are provided a basic level of information and protection including training, notification of applications, restrictions on early entry into treated areas, and access to protective equipment and decontamination facilities. In addition, flexibility is built in to ensure that employers can adapt the Standard to their unique circumstances.

The Worker Protection Standard sets both general and product specific requirements. The rule prohibits spraying of pesticides while anyone is in the field. The rule also requires agricultural employers to provide to agricultural workers and pesticide handlers:

- information about pesticide application,
- basic pesticide safety training,
- decontamination supplies for use in case of pesticide exposure,
- emergency transportation when needed, and
- clean, operating Personal Protective Equipment for use by their employees.

We recognize that all agricultural operations are not the same. Therefore the Standard also contains provisions or give employers the flexibility to adopt approaches suited to specific circumstances. These include:

- Exemptions from most of the provisions for agricultural owners, and their immediate families. These exemptions pertain to 45% of the nation's farms;
- The option of providing information notices to most pesticide applicators either orally or by posting treated areas;
- Exceptions permitting reduced use of Personal Protective Equipment when closed pesticide handling systems are used;
- When no contact with pesticide residues is possible, an exception to the prohibition on entering fields during a Restricted Entry Interval after application -- such circumstances may exist after proper soil incorporation of pesticides or while an employee is in a vehicle which prevents contact with treated surfaces.
- Unlimited access to treated areas by crop consultants using protective equipment to allow assessment of pest populations or crop requirements;
- Options for ventilating greenhouses after some applications; and
- An exception process to permit specially-protected workers to perform hand labor during Restricted Entry Intervals. The Agency will consider petitions for exceptions which demonstrate both the need for a new exception and how workers can be adequately protected. I should note that EPA continues to regard the routine use of Personal Protective Equipment while performing hand labor to be impractical and potentially dangerous to workers.

The Worker Protection Standard also includes requirements which are specific to particular pesticide products. These specific requirements reflect both the chemical

characteristics and the actual use patterns of individual products, to avoid having to take these additional precautions for all pesticides. They include:

- Restricted Entry Intervals after pesticide application.
- Personal Protective Equipment during application or other handling of pesticides, or in those limited circumstances when workers are permitted to enter treated areas during Restricted Entry Intervals to perform tasks which may bring them in contact with pesticide residues for certain toxic pesticides.
- A requirement for both posting treated areas and oral notification to workers for certain highly toxic pesticides.

These product specific requirements are to be listed on labels of affected products. Now I will discuss steps EPA has taken to implement these important requirements, including preparing the States for their role.

IV. WHAT EPA HAS DONE TO IMPLEMENT THE WORKER PROTECTION STANDARD

It is clear that effective implementation of the Worker Protection Standard will require the participation of all involved: EPA, pesticide users, States, and registrants. The changes in agriculture that the Worker Protection Standard put into place are important and will require long overdue changes in the protection afforded to agricultural workers. But these changes should not be disruptive and will provide enormous benefits to agriculture in the long run.

The Worker Protection Standard will be effective if everyone in the field knows his or her responsibilities and is prepared and able to carry them out. EPA will rely substantially on the cooperation of agricultural employers, the expert assistance of the States, and the timely compliance of pesticide registrants. Because of the complexities of implementation, the Office of Pesticide Programs and the Office of Compliance Monitoring have undertaken their most extensive outreach effort ever. We are conducting workshops and developing and distributing training materials to agricultural employers, agricultural workers, pesticide handlers, and State enforcement inspectors. Specifically, we are conducting efforts in each of several areas:

Training

To facilitate training of agricultural employers, EPA has:

- Developed a plain English manual on how to comply with the Worker Protection Standard for agricultural employers. We are distributing it, and the States and other groups are reproducing it, and it already is widely available across the country.
- Developed a pesticide safety poster for use by employers that meets the requirements for posting of pesticide safety information. The poster is available from the Government Printing Office and many pesticide retailers.
- Developed a sign for posting areas treated with pesticides. The sign has been distributed by States, pesticide producers, and some pesticide retailers.

- Funded workshops in every EPA Region to train the people who instruct agricultural employers about the Worker Protection Standard.
- Developed a series of fact sheets on the Worker Protection Standard requirements applicable to agricultural employers. These will be available from the sources mentioned above.
- Designed a national training verification system under which cards will be distributed to agricultural workers and handlers as they are trained so that they can demonstrate training by a prior employer or other trainer, thus minimizing the employer training burden.
- Provided grants to States to help fund their implementation efforts. These grants totalled \$ 1.5 million in FY 1991 and FY 1992 and ranged from \$ 20,800-40,000 per State. The total of grants increased in FY 1993 to \$ 2.5 million and ranged up to \$ 60,000 per State. Grants for FY 1994 remain at FY 1993 levels.

To facilitate training of agricultural workers and pesticide handlers, in the near future:

- EPA has developed handbooks to train agricultural workers and pesticide handlers about the requirements of the Worker Protection Standard. The handbook for worker training has been distributed and the handbook for pesticide handlers will be finalized in December. EPA will later develop slide sets, video tapes, and flip-charts to supplement the handbooks during training presentations. The National Agricultural Chemicals Association and pesticide

distributors have agreed to reprint the worker handbook and they will fund training in the use of Personal Protective Equipment, including respirators and gloves.

- EPA will conduct workshops to train people who will be training agricultural workers and pesticide handlers.

Compliance

EPA's program to inform and train State regulatory officials includes:

- A Compliance Monitoring Strategy, developed by EPA and States, which outlines implementation and monitoring efforts that EPA expects States to undertake.
- Development, with States, of State Implementation Plans for training the regulated community, coordination with other jurisdictions, communications, and compliance.
- The Interpretive Guidance Workgroup (IGW), which is addressing over 200 requests for interpretations of the Standard from States, regions, and the regulated community.
- Training for State pesticide officials including:
 - a series of courses for senior State regulatory officials (six held to date).
 - guidance documents and pocket guides for State field inspectors to serve as a ready reference to the requirements,

- provision of Inspection Checklists to standardize enforcement by States and Indian Tribes with delegated FIFRA enforcement authority.
- training courses at least twice a year to train inspectors who will train other inspectors in their jurisdictions. We plan to enroll 120 inspectors in such national worker protection Train-the-Trainer courses in Fiscal Year 1994.

To support enforcement efforts in addition to grants mentioned earlier, EPA has designated \$2.0 million for States and Indian Tribes to develop Worker Protection enforcement programs in each Fiscal Year between 1990 and 1994. In FY 94 funding levels will range from \$20,800 to \$84,800 per State. An additional \$1.0 million is being provided to EPA Regions as discretionary funds to support new State programs including Worker Protection in FY 94. EPA and its State enforcement partners will emphasize inspection of pesticide products and application and handling locations which present the greatest risk to farm workers and pesticide handlers. Risk factors include the number and toxicity of pesticides formulated at a facility, the number of workers potentially exposed, the production of crops requiring intensive hand labor, or use of pesticides.

Pesticide Product Labelling

Under FIFRA, EPA does not have authority to directly enforce most regulations, including the Worker Protection Standard. Therefore, to make the new requirements of the Worker Protection Standard enforceable EPA must require 650 registrants to make label changes on some 5,000 affected products. While EPA is hopeful that agricultural employers will comply with the regulations without waiting for newly labelled products to appear, enforcement is dependent on the appearance of newly labelled products in the market place.

The changes to the labels include statements requiring compliance with the general requirements intended to protect all workers and handlers. A label will also require restricted entry intervals, use of Personal Protective Equipment, and selected requirements for notification of workers about pesticide treatments. EPA is allowing sufficient time in the label-changing process to minimize disruption to registrant production and shipping practices and to allow continued availability of product to the agricultural community.

In April 1993, EPA issued a notice to all registrants to guide revision of their affected labels. The basic schedule for relabelling products, as originally set out by EPA is as follows:

- No newly labelled products were allowed to be sold before April 1993. This was to allow time for agricultural employers to learn about the new requirements before new products appeared.

- All products sold or distributed by registrants after April 26, 1994, must bear revised labels.
- All product sold or distributed after October 1995 must bear the new labels. April 1993 - October 1995 is a "phase-in" period.
- After April 1993, anyone using a newly labelled product must comply with all of the requirements of the Worker Protection Standard.

Agency guidance to registrants on making label changes was not available promptly after the Standard was issued in August 1992. Consequently, to smooth the transition for pesticide producers and users, this summer EPA allowed existing stocks of pesticides produced before 1994 to be sold without fully revised labels until October 1995 under certain conditions. EPA had originally specified that products with old labels could not be sold or distributed by pesticide producers after April 21, 1994. Registrants may ship certain existing products produced in 1993, without revising existing labels, if separate information on the requirements of the Standard accompanies the product, registrants take back or relabel product not sold by October 1995, and EPA is notified. EPA also allowed a self-certification procedure for registrants' initial compliance with the new labelling requirements. These adjustments help registrants by allowing uninterrupted production.

On and after October 23, 1995, all products sold or distributed to agricultural employers by anyone must have modified labels. EPA does not intend to allow the October 23, 1995, date to slip. While we have been willing and ready to make

reasonable accommodations to facilitate orderly implementation of the new Standard, there can be no further delay in protecting workers who for so long have been without critical protections.

This brings me to a discussion of the other impacts of the Worker Protection Standard.

V. IMPACTS OF IMPLEMENTATION

As I mentioned when I began, we recognize that implementation of this vital regulation does not come without some cost to American agriculture. On the other hand we believe that some concerns about impacts may be exaggerated.

We are aware, for example, that there is concern that some provisions of the Worker Protection Standard might discourage use of Integrated Pest Management (IPM). EPA strongly encourages and promotes the use of IPM as a rational approach to pest management. IPM will minimize the use of pesticides. In designing the Worker Protection Standard, wherever possible EPA sought to avoid requirements which would thwart the use of IPM, including only the requirements needed to provide protection to agricultural employees. We know of few documented examples where worker protection requirements preclude all IPM practices.

Let me mention an example of a compromise made to accommodate IPM consistent with worker protection. Scouting to assess whether pest pressure may reach economically significant thresholds is a key element of IPM. Therefore, the Worker Protection Standard affords crop advisors, whose duties include scouting, access to

fields that have been, or are being, treated at any time. Crop advisors, we believe, are well informed about the risks of pesticides and perform duties that will permit them to adequately protect themselves in this situation.

We have heard concerns that the Worker Protection Standard's general restriction on worker entry soon after spraying may lead employers to apply pesticides on a schedule without regard to whether pest pressures justify the application. Regularly scheduled spraying might provide greater assurance that workers could enter fields to perform hand labor when needed. While some establishment owners or operators may adopt this practice, we believe that most owner/operators will integrate the constraints embodied in the Worker Protection Standard into IPM schemes. To further accommodate agricultural employers, when unexpected pest pressure or occurrences, such as floods or freezes reach levels deemed to be unanticipated and an emergency by a government entity and the employer, the Standard permits specially protected workers to conduct hand labor operations.

EPA estimates in its Regulatory Impact Statement that the incremental costs of this final rule will be about \$95 million in the first year and about \$50 million annually thereafter. Annual costs may increase if contemplated changes to the rule are adopted. Workers will receive training which need not be repeated annually, and relabeling pesticide products for the Worker Protection Standard is planned only once. The estimated annual benefits of this final rule include avoiding an estimated 80 % of 20,000 physician-diagnosed (non-hospitalized) acute and allergic pesticide poisoning

incidents, avoiding about 300 hospitalizations due to pesticide poisoning incidents, and avoiding potentially significant number of cancer cases, serious developmental defects, stillbirths, persistent neurotoxic effects, and non-diagnosed acute and allergic poisoning incidents.

The California Department of Food and Agriculture (CDFA) has recently provided an analysis of impacts associated with the Worker Protection Standard. The report correctly identifies the types of problems that may occur during implementation of the Standard, however, the analysis overstates the costs. It makes certain erroneous assumptions, such as that irrigation workers may not enter treated fields, makes undocumented calculations about resulting crop losses, consumer price increases, and impacts of notification and training requirements. The CDFA report makes no attempt to calculate overall costs, or benefits, to society from the Worker Protection Standard.

VI. PLANS TO STRENGTHEN THE WORKER PROTECTION STANDARD

EPA has committed itself to strengthen the worker protection standard where unreasonable risks may exist. We have focused initially on the safety training requirements. Currently agricultural workers may work for 15 days for EACH agricultural establishment before training is required. This so called grace period does not apply to pesticide handlers or workers entering a field during the restricted entry interval. EPA is concerned that some workers may never receive training because of the grace period. EPA is also concerned that this grace period may make the requirement to train agricultural workers difficult to enforce. Consequently, EPA is

committed to propose an amendment to the Worker Protection Standard to reduce or eliminate the training grace period for agricultural workers. A final amendment would be effective in 1995. In the meantime, EPA will conduct an initiative to monitor compliance with the training requirement, and collect data on compliance rates.

VII. PESTICIDE REFORM LEGISLATION

Finally, I would like to discuss the Administration's pesticide reform proposal. Many of the FIFRA changes the Administration has proposed will directly or indirectly benefit agricultural workers. First, as I mentioned earlier, one of the front line beneficiaries of reduced risk pesticide products are agricultural workers who regularly handle or otherwise come into contact with pesticides on the job. The Administration's legislative proposal, which will increase incentives for development of safer products and increase the use of IPM, will benefit agricultural workers as well as the environment. Reforming cancellation and suspension will protect workers by allowing EPA to act more expeditiously to reduce the risk of a pesticide which poses unreasonable adverse effects. For a chemical posing unacceptable risks to workers, this will be a great benefit. Allowing direct enforcement of regulations, such as the Worker Protection Standard will allow faster, simpler, and more complete implementation of critical regulations. Our label call in proposal will allow EPA to act quickly to make label changes to reduce a pesticide's risk. Often times, use of a high risk pesticide can be continued if the appropriate precautions are mandated by the

label. The label call-in proposal will allow EPA such flexibility. Each of these proposals will further protect those who work with pesticides as part of their jobs, including farmers, their families, and their employees.

VIII. CONCLUSION

This Administration, however, is committed to making the 1990's a period of significant change in pesticide use and regulation. We are developing new partnerships to achieve pesticide use and risk reduction and undertaking new efforts to improve food safety. We are supporting comprehensive reform of major pesticide laws as well as reform of pesticide practices to help reach our public health and environmental protection goals. The Administration's reform package has many features that will improve service for the general public, the regulated community, and for all agricultural workers.

In this context it is worth noting that insofar as IPM results in less frequent or less toxic pesticide applications, the burden of the Worker Protection Standard diminishes, and the burden will diminish further as safer pesticides are brought to market. Worker protection, IPM, and reduced risk pesticides - all make sense, and American agriculture's dollars are based on good sense.

Never has public concern about the risks to human health resulting from the use of pesticides been greater. That public concern is certainly justified for the four million agricultural workers who are the people at greatest risk from occupational exposure to toxic substances. They are the workers on whose day to day efforts this

Nation's food, fiber, indeed our agricultural power depend, and they are the workers who will be helped, at last, by our revised Worker Protection Standard. These workers include entrepreneurs whose livelihood depends on continued good health, as well as transient workers with little education or who do not speak English. They include employees of national corporations as well as small cadres of unpaid workers including friends and relatives on whom the continued existence of the family farm depends.

All of these groups deserve the benefit of our modern knowledge of the risks they may encounter in the places where they earn their livelihood and of techniques for minimizing the risks. All of them deserve these benefits regardless of their stations in life. Society benefits when all segments of society have a safe work environment. Our system of agriculture can continue to be the model for the world, and we can be proud that we strive to give all persons basic safety information, and help in using it.

There is no doubt that our Worker Protection Standard will involve additional cost, and require changes in the practice of agriculture. However, I know we can agree that we can no longer avoid those costs by leaving our agricultural work force open to needless risk that none of us would want to accept for ourselves or our families.

Thank you for your attention, I would be pleased to answer any questions that you may have.

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POSITION STATEMENT

Testimony of

Rick Perry, Commissioner
Texas Department of Agriculture
on behalf of the

National Association of State Departments of Agriculture
before the

House Agriculture Subcommittee on
Department Operations and Nutrition
U.S. House of Representatives
November 10, 1993

re: The Worker Protection Standard for Agricultural Pesticides

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to testify this morning on the Environmental Protection Agency's (EPA) new Worker Protection Standard for Agricultural Pesticides (WPS). I am Rick Perry, Commissioner of the Texas Department of Agriculture (TDA). I also appear here today on behalf of the National Association of State Departments of Agriculture (NASDA). NASDA is the nonprofit association of public officials representing the Commissioners, Secretaries and Directors of Agriculture in the fifty states and the territories of American Samoa, Guam, Puerto Rico, and the Virgin Islands. In most cases, under a cooperative agreement with the EPA, the state departments of agriculture serve as the lead state pesticide regulatory agency in each state. I commend you for recognizing the importance of discussing the impact that EPA's newly enacted Worker Protection Standards will have on American agriculture and the state regulating agencies.

My colleagues and I hope to accomplish two goals. First, to demonstrate conclusively the need to delay implementation of the compliance enforcement provisions of the Worker Protection Standards. We must have adequate time to properly educate those affected by these far-reaching and complex regulations. Second, we want to encourage the initiation of a dialogue between EPA and agriculture to resolve numerous concerns on vital issues that will be explained in detail by my colleagues.

American business in general and American agriculture specifically have had enough of bureaucracy at both the federal and state levels, but especially bureaucracy out of Washington. The men and women who feed and clothe this nation are suffocating under the weight of mounting federal regulations. Fortunately, these folks aren't about to cry "uncle" and give up, they are rising up to fight for reasonable regulatory guidelines and the logical implementation of these regulations. However, the newest and most egregious example of the federal regulatory process gone askew is the Worker Protection Standards promulgated by EPA.

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NASDA supports the concepts embodied in the WPS regulations. American agriculture wants to protect farmworkers and those who handle pesticides from unreasonable risks of pesticide exposure. This is a legitimate concern of everyone involved in agricultural production. But this policy must be implemented in a way that is reasonable to all. That means regulations that can be easily interpreted by regulators and the regulated community, that are not excessively costly and that don't unnecessarily hinder a business' ability to operate and prosper. Unfortunately, the WPS regulations fail these standards on all counts.

NASDA does not come into this hearing on a whim or with a lack of knowledge on this issue. NASDA has been increasingly active in this issue. I currently chair the NASDA Task Force on Worker Protection Standards, which has been generating information to the states and acting as a clearinghouse of issues and concerns raised by the states. In fact, the more we know about the WPS regulations and their impact on agriculture, the more committed we are to press forward with our requests. As you can see from the make-up of this panel, concerns with the WPS are nationwide, and have raised concerns in all regions of the country.

At this time I would like to submit for the record a copy of an action policy on WPS that was unanimously approved by NASDA in September (Attachment D). This document simply requests that EPA delay implementation of the WPS regulations until there is sufficient time for educational and outreach activities with the agricultural community and that EPA and NASDA work together to resolve issues of concern to the states.

I want to also mention report language that was offered by Senator Phil Gramm on behalf of NASDA and included in the Senate version of the FY94 VA, HUD, and Independent Agencies appropriations bill (Attachment E). This language acknowledges the substantial concerns that have been raised over the complexity of the WPS regulations and suggests that EPA reconsider its implementation schedule to permit adequate educational and outreach activities.

Let me also offer for the record a list of questions compiled by NASDA and submitted to all states regarding implementation of the WPS regulations and the initial responses we have received (Attachment A). The concerns expressed focus on restricted entry intervals, the impacts of posting requirements on farming operations, how farmers will notify individuals who venture near a treated field or greenhouse, the impact of personal protective equipment requirements and the assumption of liability for violating these new regulations. I am concerned that this is only the tip of the iceberg. As producers learn more about these regulations, the more problems they bring to our attention.

The case for delay is further supported by the activities of EPA itself. In a publication released to state lead agencies throughout the nation in April 1993, EPA established dates on the development and distribution of significant materials for states to use in educating the regulated community on WPS. However, these dates have not been adhered to because of numerous problems related to the development of the materials.

For example, EPA was months late in developing and disseminating its "How to Comply" manual to the states. This is a 141-page publication that is supposed to provide "What Employers Need To Know," and is the most significant document EPA is producing on WPS. Texas received 120 copies just a few weeks ago. The states now have less than six months before enforcement measures are initiated. In this narrow time frame the states must reproduce or disseminate the publication to the entire agriculture community and provide outreach services so the WPS regulations can be thoroughly understood by those same folks who must adhere to these complex regulations. The timing on this just won't work if we expect to have uniform compliance with these new standards.

The document that producers must use to educate their farmworkers on the WPS regulations has not yet been shipped by EPA. This training manual, and the various audio-visual aides that can be used by producers, should have been available months ago. EPA has informed us the material is at the printers. But this doesn't help those individuals who need to train their workers before the regulations are enforced.

Also, EPA required each state lead agency to develop a "State Implementation Plan" for WPS within eight months after publication of the regulations in the *Federal Register*. EPA then gave itself 30 days to either reject or comment on the Plan. The Worker Protection Standards were published on August 21, 1992. The eight-month deadline for the states expired April 21, 1993. The EPA deadline was May 21, 1993. However, an informal survey by my staff during the past week showed that many states are just now getting their plans back from EPA. The states are unable to effectively begin their responsibilities under WPS until EPA approves these plans. This delay by EPA is further penalizing many states that must press forward with a program they are not prepared to enforce.

There is more. EPA has literally hundreds of un unanswered questions from the states relating to implementation of the regulations. EPA created an Interpretive Guidance Workgroup comprised of EPA headquarters and regional staff and representatives of state lead agencies to address interpretive type questions being generated from individuals, organizations, federal and state agencies and Indian tribes across the nation. A list of 270 questions were developed and presented to the Interpretive Guidance Workgroup. I would like to submit these questions for the record (Attachment C). To date, the Workgroup has successfully answered 35 of these questions. That is less than 15 percent of the questions raised on how agriculture is to comply with and the states are to enforce these regulations.

States are being put into a position of enforcing WPS provisions before answers are provided to many significant questions. The states face a situation of utilizing a large amount of time and resources in order to defend shaky compliance issues. This comes at a time when effectively utilizing our limited resources will determine the future of our states' compliance initiatives.

The Interpretive Guidance Workgroup is also impacting the validity of printed information on WPS being provided to agriculture and the states. Again, the idea of the Workgroup is to address those areas in the Worker Protection Standards that are subject to interpretation, and consequently, subject to change. An example of how the workgroup's interpretations will affect EPA material is found in the December 1992, draft copy of the "How to Comply" manual.

An explanation of the "Agricultural Owner Exemption" included the statement: "You do not qualify for the agricultural owner exemption if.... 3. your farm, forest, nursery, or greenhouse is incorporated, unless all stockholders of the corporation are members of your immediate family (as defined above). Otherwise, the corporation is the 'owner' for the purposes of WPS." The final copy of the "How to Comply" manual omits this significant statement. Therefore, interpretations are adjusted, they become contradictory to existing publications, and the printed material becomes obsolete. Due to the number of questions that still must be addressed by the Workgroup, we are very likely to see other items in the manual altered or deleted. It is NASDA's opinion that the enforcement provisions of this rule should be delayed, at a minimum, until EPA and the state lead agencies are able to address the questions and issues relating to compliance.

Finally, EPA is gravely underfunding the state lead agencies that have been given the responsibility to educate agriculture on these regulations and then implement enforcement measures.

For FY94, EPA has provided funds to the Texas Department of Agriculture to help educate those in the state who must comply with these new regulations. But these funds are hardly adequate. The Texas

Department of Agriculture will receive only \$92,000 to implement and monitor the revised Worker Protection Standards. This is approximately \$0.50 for each of the 180,000 certified pesticide applicators in the state. As required by EPA in our cooperative agreement, my agency has developed an implementation strategy for WPS. This includes outreach and communications, training, establishing cooperative relationships with other agencies, developing and implementing a compliance communication strategy and writing numerous reports on all our activities. There is one citation in the work plan between EPA and the Texas Department of Agriculture that sums this issue up. It states: "As available funding allows, reproduce training or informational materials provided by EPA and develop additional training materials." I can guarantee you that there will not be sufficient funds available to adequately educate and train those in Texas who are impacted by these regulations. If EPA's current implementation schedule is not altered, I can assure you our inspectors will end up knocking on the doors of producers who haven't heard of these regulations, let alone started complying with them.

You can extrapolate this to the entire country. For all 50 states, plus the U.S. territories, EPA has provided less than \$2.5 million for outreach, communications and training activities.

Another point needs to be made regarding EPA's unrealistic expectations of what the states can accomplish with limited funding. As enforcement agents for the federal government, we have the option to refer to EPA any enforcement case involving the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). If states choose to exercise this option because of limited federal funding, as it relates to WPS enforcement cases, is EPA ready to handle the increased workload?

As the state lead agencies continue their efforts to educate the impacted community on these regulations, the more concerned the agricultural community becomes. The Texas experience is a good case in point. In 1991, EPA selected the Texas Department of Agriculture to develop and implement a program to educate pesticide regulatory officials from other states on the Worker Protection Standards themselves and help these states establish an educational and enforcement program. TDA has now hosted four such training programs. From this, my agency has gained a wealth of knowledge on the WPS regulations. It has also allowed my staff to provide the best information available to Texas agriculture on the regulations. But this still isn't enough, as demonstrated by the hundreds of implementation questions EPA still must answer.

As recently as last week, my staff sponsored a day-long program on implementation of the regulations. More than 300 producers filled an auditorium in the Rio Grande Valley to learn about the regulations and ask questions on how to comply. Their concerns ranged from posting notices to field reentry requirements. Yet, we are still only scratching the surface of reaching those in Texas who must comply with these regulations.

The states, serving as regulators for the federal government, can't do an adequate job with the funding available, particularly with EPA's current implementation schedule factored into the equation.

Concerns regarding these regulations are nothing new. EPA should in no way be surprised by the concerns expressed this morning. During the process of finalizing these regulations in 1992, U.S. Department of Agriculture (USDA) staff was actively working with their counterparts at EPA to develop regulations that would provide additional protection to farmworkers without putting an overburdensome and financial stranglehold on agriculture. After the final rule was published in August 1992, USDA offered its own list of concerns with the regulations for publication in the *Federal Register*. I would like to offer a copy of this for inclusion in the record (Attachment B).

There are compelling arguments made by USDA on training requirements, listing of pesticides, reentry restrictions, implementing climate-based reentry intervals and all the cost/benefit analysis conducted by EPA. While some of these concerns were addressed by EPA in the final rule, most were not. I hope the subcommittee takes a closer look at this document, particularly what these regulations will cost production agriculture.

Mr. Chairman, my Colleague, Colorado Commissioner Steve Horn, will address in more detail the new labeling revision requirements EPA outlined in *PR Notice 93-11*, issued August 13, 1993. Briefly this *Notice* creates a multiple labeling situation until October 23, 1995. A situation which will be difficult for farmers to comply with and regulators to enforce. In light of this recent change in labeling requirements and the issues we are raising today, NASDA recommends that enforcement of the WPS be delayed until October 23, 1995, the date when all labels must be consistent. We believe that in the interim training and educational activities can be enhanced, and we would propose that states conduct enforcement monitoring activities to assist producers in preparing for full implementation of the standard.

We know that federal bureaucrats in dozens of federal agencies around Washington will continue to churn out new regulations. But that doesn't mean those new regulations have to be cumbersome, confusing and financially prohibitive. This is an opportunity to make the system work a little bit better.

I hope that when this hearing is concluded, agriculture, the state regulatory agencies and EPA can sit down and work out a reasonable solution to the problems that will be outlined this morning on the WPS regulations.

Again Mr. Chairman, I appreciate the opportunity to appear before this subcommittee.

(Attachments follow:)

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States in the Implementation of the
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***ISSUES OF NATIONAL IMPORTANCE TO
STATES IN THE IMPLEMENTATION OF THE
FEDERAL WORKER PROTECTION STANDARDS***

QUESTION 1

The standard prohibits hand labor cultural activities during a restricted entry interval (REI). Any other activity, such as irrigation, that may result in contact with treated surfaces is limited to 1 hour per employee during any 24 hour period. The REI will be from 12 hours to 3 days depending on the toxicity of the pesticide ingredient and average rainfall. Entry during the first 4 hours is limited to applicators and crop advisors wearing all personal protective equipment (PPE).

How will compliance with these limits, especially the irrigation restrictions, impact your farming operation?

QUESTION 2

New pesticide product labeling and the standard will require field posting of all applicators of a dermal toxicity category one active ingredient and all applications made in a greenhouse regardless of the toxicity category of active ingredient.

What do you see as the impact of these requirements on your farming operation? How would you estimate the time and money resources required to comply? Do you operate a greenhouse or open field enterprise?

QUESTION 3

The standard requires, in addition to field posting, oral warnings for all dermal toxicity category one active ingredients and all greenhouse fumigants. While the signs must be placed at the edge of the field the oral warnings must include both your employees and those of any contractor, such as a custom applicator or labor contractor, who may walk within 1/4 mile of any of your fields that are under an REI.

How do you envision identifying those required to be warned and transmit the warnings to them of their direct employer? Give examples of how you would attempt to comply with this requirement in your farming operation.

QUESTION 4

The standard requires that written information about each application, including the area treated, the date and time of application, the restricted entry interval, and the product name, registration number and identity of the active ingredient, be posted at a central place where it is accessible to employees. In most cases it must be posted before the beginning of the application.

What significant problems, if any, do you see in your farming operation coordinating the exchange of this information between crop advisors, custom applicators and yourself so that it can be posted by the time required? On average, how many applications are made on your farm during a year? How many separate (non-connected) parcels do you farm? How many applications are canceled at the last minute due to weather conditions or equipment problems?

QUESTION 5

The new standard requires you and your family to comply with labeling requirements for personal protective equipment (PPE) and labeling prohibitions pertaining to REIs.

What situations would require you to enter your field shortly after an application (during a restricted entry interval)? How will the requirements for PPE and the time and activity limitations impact these needs? Will this create any problem situations for you?

QUESTION 6

The standards provides that the farmers is equally responsible for compliance and violations that might be made by another person acting for you in either an employment or contractual relationship, such as a custom applicator.

Do you sometimes use a contractors because you feel they can do a better and safer job? Is the passing of some liability to them a consideration in your decision? If you are equally liable for violations, how would this affect your decision to use a contractor, such as a custom applicator?

QUESTION 7

The new standard defines crop advisors as pesticide handlers, like mixers/loaders, and applicators. Advisor employees, such as dealers of farm management firms, must meet the same requirements as custom applicators, including PPE, change area, decontamination facilities, emergency eye flushing, monitoring every 2 hours, handler training, and sit specific information.

Do you use a crop advisor? What impacts do you see this having on the work of the crop advisor, the advisor's employer, and your farming operation?

QUESTION 8

The new standard requires training every 5 years of both pesticide handlers and early entry fieldworkers before they begin work. Other fieldworkers must be trained before they begin their 6th day of work (until October 1995, then before the 16th day). You have equal responsibility with the custom applicator or labor contractor to ensure these employees are trained. The trainer must be a certified applicator or meet other state designated qualifications.

How would you go about ensuring these employees (both your own and contractors') are trained? Would you attempt to train yourself or hire a training firm? If hiring, would you be likely to give any preference to applicants who could demonstrate that they were already trained?

ATTACHMENT D

NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE
 1156 15TH STREET, N.W. • SUITE 1020 • WASHINGTON, DC 20005
 TELEPHONE: 202/296-9680 • FAX: 202/296-9686



POLICY STATEMENT

93/20

Worker Protection Standards

Summary

The Worker Protection Standards issued in August 1992 by EPA are a laudable goal for United States production agriculture and their underlying intentions are fully supported by the National Association of State Departments of Agriculture. However, there is a lack of flexibility in these new regulations that results in a narrow interpretation of the standards. This prohibits the need to account for regional and crop specific differences in how the standards are to be implemented. Also, unclear guidelines, unrealistic implementation dates and a lack of adequate funding from the federal government threaten to reduce the acceptance and effectiveness of the Worker Protection Standards.

Policy

Resolved that the National Association of State Departments of Agriculture requests the EPA to delay implementation of the Worker Protection Standards so that we can work together to resolve the issues of concern to the states. These include, but are not limited to: re-entry intervals relating to irrigated fields and greenhouses; the use of biological products; use of Personal Protective Equipment; exempting retail sales locations; and minimizing the impact of these provisions on Integrated Pest Management programs.

Be it further resolved, that the National Association of State Departments of Agriculture requests the EPA to delay implementation until final training materials and compliance manuals have been provided to and received by the states and adequate funding for education and enforcement activities are provided by the federal government. This will ensure sufficient time is provided for educational and outreach activities with the affected individuals and organizations.

September 1993

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 SECRETARIES AND DIRECTORS OF AGRICULTURE IN THE FIFTY STATES AND FOUR TERRITORIES.

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ATTACHMENT E

Calendar No. 194

103D CONGRESS
1st Session }

SENATE

{ REPORT
103-137DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING
AND URBAN DEVELOPMENT, AND INDEPENDENT AGEN-
CIES APPROPRIATION BILL, 1994

SEPTEMBER 9 (legislative day, SEPTEMBER 7), 1993.—Ordered to be printed

Ms. MIKULSKI, from the Committee on Appropriations,
submitted the following

REPORT

[To accompany H.R. 2491]

The Committee on Appropriations to which was referred the bill (H.R. 2491) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1994, and for other purposes, reports the same to the Senate with various amendments and presents herewith an explanation of the contents of the bill.

AMOUNT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY

Amount of bill as recommended in House	\$87,946,121,032
Amount of change by Committee	- 3,592,000
Amount of bill as reported to Senate	87,942,529,032
Amount of appropriations to date, 1993	89,719,062,000
Amount of budget estimates, 1994	89,268,383,032
Under estimates for 1994	- 1,325,854,000
Over appropriations for 1993	- 1,776,532,968

SEE Program should not be subject to work restrictions or limitations placed on contractors and contract employees.

The Committee is strongly supportive of the Agency's efforts to coordinate water quality activities and other initiatives conducted within the Gulf of Mexico program, which is modeled after similar programs in the Chesapeake Bay and Great Lakes regions. The Committee expects the Agency to provide at a minimum an amount approximating the fiscal year 1993 budget to support these important initiatives.

The Committee notes that EPA's new pesticide worker protection standards will be effective in April 1994, and will impact both farmworkers and employers. Education and training of those most directly impacted by these standards is critical. Therefore, the Committee urges the Agency to provide resources for farmworker pesticide worker safety training and worker protection standards training for agricultural employers, as authorized by the National Environmental Education Act of 1990 (Public Law 101-619) and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136u). The Committee understands that a curriculum has been developed by two major farmworker organizations and these organizations could be used to provide worker safety training.

EPA has developed a comprehensive plan for implementing the new worker protection standards for agricultural pesticides. In an effort to meet deadlines established in the regulations, the Agency has recently published additional supplemental instructions governing pesticide label changes. Unfortunately, substantial concern has been raised over the complexity of these requirements and the potential for confusion or uncertainty by State regulatory agencies and agricultural users. The Committee, therefore, suggests that EPA review their implementation schedule of these standards to permit adequate educational and outreach activities.

The Committee recognizes that there is a significant problem in many native American communities in meeting even the minimum criteria established by EPA regarding solid waste management. For several years, EPA has been involved in ongoing projects with many of these native American communities to aid them in developing plans to meet EPA regulations concerning solid waste management. The Committee strongly urges EPA to continue this assistance to native American communities to prevent the significant environmental and public health threats posed by inadequate management of solid waste.

The Committee supports the joint efforts of EPA and the Soil Conservation Service toward developing a policy and protocol to treat major unique watersheds, which drain large agricultural and forestry areas, as ecosystems. An important element of this effort is to incorporate both economic and environmental planning and management. The Committee urges these agencies to jointly begin such an effort serving the gulf coast region.

The Committee is aware that gas-fired space conditioning technologies have potential to reduce emissions of chlorofluorocarbons as well as conserve energy. EPA is encouraged to promote the use of these technologies as part of its global climate change program. These efforts should be coordinated with the Department of Energy.



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POSITION STATEMENT

Testimony of
Henry J. Voss, Director
California Department of Food and Agriculture
before the
House Agriculture Subcommittee on
Department Operations and Nutrition
U.S. House of Representatives
November 10, 1993

re: The Worker Protection Standard for Agricultural Pesticides

It is my pleasure to be here today before the House Agriculture Subcommittee on Department Operations and Nutrition. My name is Henry Voss and I am Director of the California Department of Food and Agriculture (CDFA).

I am here to discuss the grave concerns I share with members of the agriculture industry in California about the new federal Worker Protection Standard. While we strongly support a safe occupational environment for farmworkers, pesticide handlers and growers, it is unclear that some of the new provisions will provide any significant additional protection from pesticides. Further, surveys of growers and a study by the University of California have shown that these standards will have serious economic impacts, including supply fluctuations for various commodities, increased grower costs, and increased prices to the consumer. A copy of the study is attached to my testimony.

These adverse effects will be hard felt in California due to the unique conditions found in the state. Unlike some areas of the country where crop production is less diverse, California produces a broad variety of minor crops, often grown simultaneously by a single farm operation on adjacent or scattered small fields. California farming relies on irrigation, and that irrigation requires timely entry into fields to set and maintain pipe and sprinkler systems. These activities will be nearly impossible due to new restrictions on activities performed during restricted entry intervals (REIs). California also has an effective state worker safety program already in place, which the new rules will complicate unnecessarily.

California's pesticide regulatory program began in 1911, when the first state law regulating pesticide product quality was passed, a year after the passage of similar federal legislation. In the 80 years since that beginning, a body of state law has grown to cover all aspects of sales, possession and use of pesticides in California. Many of these laws are unique to California. They include statutes mandating protection of air; surface and ground water; regulations governing pesticide use reporting and use enforcement; and programs to develop alternatives to pesticides and to guard worker health and safety.

For over twenty years, California has had an aggressive worker protection program to protect field and other workers who may be exposed to pesticides during the conduct of their work. This program specifies work practices for employees who mix, load, apply, store, transport or otherwise handle pesticides, as well as workers exposed to residues on treated plants.

Any worker safety program must emphasize the need for extensive communication between employers and employees about the safe use and handling of pesticides. The current program in California is designed to ensure that employees are knowledgeable about the hazards they face in the work place and that they understand the procedures necessary to protect themselves. The program requires employers to make pesticide labeling available and to provide employees with information regarding emergency health services. Employers must train their employees in the hazards of the pesticides, safety procedures to be followed, use of personal protective equipment, symptoms and ways pesticide poisoning can occur and decontamination procedures prior to allowing employees to handle any pesticide. Current regulations also give workers access to information about the pesticides applied to fields. The field worker protection program includes extensive field posting and restricted entry intervals that exceed many of those by the federal worker protection standard. If any work place, including treated fields, is suspected of being unsafe for a worker to enter, employees are prohibited entry and employers must provide medical supervision until the safety of the work place has been determined and protection of workers can be assured.

In comparison to this program, the new federal Worker Protection Standards does not provide significantly better protection in California. It does, however, hamstring the grower by imposing burdensome and unworkable requirements on standard agricultural practices in the state. For example, the federal standard will severely restrict the activities of workers who need to enter certain pesticide-treated areas to set irrigation equipment and irrigate crops during a "Restricted Entry Interval." Current California regulations, and many pesticide labels, allow entry into treated fields once the "sprays have dried or the dust has settled." Irrigation workers wearing appropriate protective clothing can enter a treated area to set irrigation equipment, if there will be no significant contact with treated foliage. The new federal standard prohibits entry for the first four hours after treatment and then restricts access to a maximum of one hour per worker in any twenty-four hour period. This time limitation places a tremendous hardship on growers' ability to provide adequate water to their crops.

This particular restriction does not merely inconvenience the grower but results in significant economic impacts on consumers. CDFA, in cooperation with the University of California at Berkeley, prepared an assessment of these potential impacts to production agriculture in California. After examining only four crop/chemical combinations where irrigation is necessary immediately following pesticide application, that study found that consumers would pay \$230 million more for lettuce, broccoli, cauliflower, and celery. Don't forget that California produces from 70 to 90 percent of these crops for the nation.

Here is an example from that report. Lettuce is grown in the Central Coast and in the San Joaquin Valley for the spring and summer market, and in the Imperial Valley for the winter market. Growers plant every few days in order to produce a continuous supply of lettuce for the market. Herbicides are applied immediately after planting to control weed growth, usually in the early morning hours to take advantage of the cool temperatures and reduced wind conditions. In order for most of these products to be effective, treated soil must be irrigated to allow the chemical to penetrate to the root zone of germinating weed seeds. Current practice is for workers wearing protective clothing to enter the field soon after the "spray is dry" to set irrigation equipment, as allowed on the pesticide label. However, the federal standard will prohibit these same workers from entering the field any sooner than four hours, and then for only one hour in any 24-hour period. The delay in installation of irrigation equipment and subsequent irrigation in order to conform with this standard will result in uneven germination of the seed and reduction of overall effectiveness of the herbicide application. The net result is a reduction in yield to the grower, increased pesticide use at a time when the Administration and agricultural industry is moving toward "reduced" and more effective use, and ultimately, higher prices paid by the consumer.

As mentioned, California already has a sound worker protection program in place with standards above most other states. Imagine the negative economic impact this new federal regulation will have on states who will be required to make more significant adjustments than California.

In cooperation with the National Association of State Departments of Agriculture (NASDA), CDFA conducted a survey of California growers which provided a qualitative assessment of the potential impacts and associated costs of the federal Worker Protection Standard. One of their major concerns are the various new requirements for notifying employees, which include displaying information about all pesticide applications at a central location; notifying your own workers of any field that is under a restricted entry interval if they pass within one-quarter mile; and providing posting and oral notification about any crops treated with toxicity category I active ingredients. These rules have become a source of tremendous confusion and conflicting interpretation, not only to growers but to the public. In the Salinas area, one grower may have dozens of non-adjacent 10 to 40 acre plots under his authority. Those fields may be bound by residential areas. Workers could be bombarded with warnings about this patchwork of fields but never know about a treatment in a field next to them that had a different owner. Further, the grower must warn any of his workers who may walk within a quarter mile of a treated field, leaving the public wondering why they would receive no notice when they live within a quarter mile. Growers are acutely aware of the additional costs created by this apparently well-intentioned regulatory muddle and doubly resentful because they make no sense from a health standpoint and foster additional public concern.

In summary, agricultural practices in California are unique. We have one of the most diversified cropping systems in the world with over 250 crops, many of which are only grown in our state. We supply the nation with an abundance of vegetables year-round grown in a variety of climatic conditions, but largely dependent on irrigation. High value crops are grown on fields as small as 30, 20 or even 10 acres, that require high human input for weeding, thinning, insects and disease control, harvesting and irrigation.

California is also unique in having eight years of experience with one of the most restrictive pesticide regulatory programs in the world, a program that emphasizes safe use of pesticides by farmworkers and investigates every reported case of pesticide illness. Over the last 20 years, growers have been required to adopt more and more safeguards at considerable costs. The cost of our state regulatory program is \$44 million but this does not include the costs to the grower of implementing the regulations and the cost in decreased competitiveness when growers are denied access to products used elsewhere in the nation. I believe we have done a fine job in protecting the public, the worker and the environment from the possible adverse effects of pesticides. I also believe that we have developed the field experience to discern whether regulations are really going to improve pesticide safety and be worth the cost of implementation. It is, at best, unclear that the new federal regulations will provide any significant additional protection from pesticides.

Finally, in support of the NASDA position, I would point out that the worker safety program in California has evolved slowly over the last 20 years with input from farmworkers and growers and with plenty of time to test what measures are both realistic to implement and beneficial to the worker. The EPA's proposal to move the entire nation to where we are and beyond in one year is badly conceived, costly, and unrealistic. While we support and applaud efforts to protect the farmworker, we believe that the EPA should slow down their implementation of the new standards, while emphasizing those changes that will provide the most immediate relief from unsafe condition. I, therefore, support the timeline suggested today by Texas Commissioner Rick Perry. Further, we feel that the EPA must take into account differences in regional farming practices, either by re-opening the rule to permit changes in some of the least workable requirements, or by allowing states maximum flexibility in their enforcement of the standards, so that the goal of protecting the farmworker can be met without creating unanticipated costs to the consumer or grower.

(Attachment follows:)

**ECONOMIC IMPACTS OF THE FEDERAL WORKER PROTECTION STANDARD
ON PRODUCTION AGRICULTURE IN CALIFORNIA**

by

David Sunding, UC Berkeley

Cheryl Brown, UC Berkeley

Bob Chavez, CDFA

Steve Shaffer, CDFA

Office of Pesticide Consultation and Analysis
California Department of Food and Agriculture

October 15, 1993
(Revised: October 29, 1993)

The economic analysis was performed under contract with the Department of Agriculture and Resource Economics at the University of California in Berkeley. The authors acknowledge helpful conversations with Jerry Siebert, Howard Rosenberg, Cherisse Yarkin, David Zilberman and numerous growers and farm advisors.

EXECUTIVE SUMMARY

The new federal Worker Protection Standard (WPS) will lead to supply fluctuations for various commodities, increased grower costs, and increased prices to the consumer while providing unknown additional protection from pesticides to farm workers, pesticide handlers, or growers. These adverse effects will be especially hard felt in California due to the unique conditions found in the state. These conditions include a predominance of a broad variety of minor crops often grown simultaneously by a single farm operation on adjacent or scattered small fields. Prevailing climatic conditions (i.e., low rainfall) and the reliance on irrigation will exacerbate the impacts caused by increased restrictions on activities performed during restricted entry intervals (REI's) because many field activities require precise timing. Finally, some requirements of the federal WPS will unnecessarily replace the effective state regulatory program already in place.

Using single herbicides on each of four crops as examples of impacts resulting from the new REI limitations, consumer price increases were estimated for a 5% yield reduction due to uneven seed germination, less efficacious weed control and less timely field operations. The results show price increases to the consumer of \$165 million for lettuce, \$50 million for broccoli and cauliflower, and \$17 million for celery.

Costs to the grower resulting from the new REI requirements were difficult to ascertain and were not quantified. However, based on grower interviews, there will be increased costs associated with scheduling field crews, rotating early entry workers, and increasing crop management due to reduced efficacy.

Based on information obtained through a grower survey, using a small subset of California crops, grower cost increases due to the noticing requirements of the WPS was identified as significant. Additionally, the complexity of complying with the requirements was considerable. Noticing activities include central posting of specific application information, oral warnings to workers who may be within 1/4 mile of a treated field, and posting of signs for treated fields. Costs will vary widely depending on the size and diversity of the operation and the number and location of fields. A grower responsible for a 400-acre diversified vegetable operation consisting of 20 fields and employing 160 field workers WILL have to notice hundreds of pesticide applications per year, with associated clerical, material, supervisory, and labor costs.

Worker training is another feature of the WPS for which growers will incur additional costs. These costs could not be estimated within the time frame allotted for this study. However, these costs may be significant and should be analyzed.

The federal WPS became effective as of October 20, 1992, and will be enforced starting April 15, 1994.

**ECONOMIC IMPACTS OF THE FEDERAL WORKER PROTECTION STANDARD
ON PRODUCTION AGRICULTURE IN CALIFORNIA**

October, 1993

I. Introduction

The United States Environmental Protection Agency (USEPA), under the Federal Insecticide and Rodenticide Act (FIFRA), has made broad revisions to the Federal Worker Protection Standard (WPS) governing the protection of workers from agricultural pesticides. The revised regulations expand the scope of the standard to include not only workers performing hand labor operations in fields treated with pesticides, but also employees in forests, nurseries, and greenhouses, employees who handle (mix, load, apply, etc.) pesticides for use in these locations, and their employers. This report provides background on California's unique agricultural industry and the federal WPS in Section II, and examines some of the impacts of the USEPA federal worker protection requirements on production agriculture in California in Section III.

Although many of the requirements of the federal standard benefit workers and are already part of the State's worker protection program, California's agricultural industry has expressed concern over specific requirements of the standard. Eight key issues were identified by the California Department of Pesticide Regulation (CDPR) for the National Association of State Departments of Agriculture (NASDA) survey of state lead agencies regarding the federal WPS. These include:

- 1) The standard prohibits hand labor cultural activities during a restricted entry interval (REI). Any other activity, including installation of irrigation equipment, that may result in contact with treated surfaces is limited to one hour per employee during any 24 hour period. The REI will last from 12 hours to three

days depending on the toxicity of the pesticide and average rainfall. Entry during the first four hours is limited to applicators and crop advisors wearing personal protective equipment.

- 2) The standard provides that the grower who contracts with an agent acting on the grower's behalf, such as an applicator or farm labor contractor, is ultimately liable for violations of the WPS committed by the agent.
- 3) New pesticide product labeling and the federal standard will require field posting of all applications of a dermal toxicity category I active ingredient and all applications made in a greenhouse regardless of the toxicity category of the active ingredient.
- 4) The federal standard will require that, in addition to field posting, oral warnings be issued for all dermal toxicity category I pesticides and all greenhouse fumigations. While the signs must be placed at the edge of the field, the oral warnings must be given to both the growers' employees or those of his contractors who may come within one quarter mile of any fields that are under an REI.
- 5) The standard requires that written information about each application, including the area treated, the date and time of the application, the REI, the product name, registration number and identity of the active ingredient, be posted at a central place where it is accessible to employees. In most cases, this information must be posted prior to application.
- 6) Growers and their families will be required to comply with labeling requirements for personal protective equipment (PPE) and labeling prohibitions pertaining to REIs.
- 7) The standard treats crop advisors as though they were pesticide handlers, such as mixer/loaders and applicators. As such, the employer must provide these personnel with PPE, a change area, decontamination facilities, emergency eye flushing stations, monitoring every two hours, training and site-specific application information.

- 8) Growers will be required to train both pesticide handlers and early entry fieldworkers before they begin work, and these employees must be retrained every five years. After August, 1997, other fieldworkers must be trained before they begin their sixth day of work. The grower will have ultimate responsibility to ensure that all of his or her employees and contractor's employees receive proper training. The regulations require that the trainer be a certified applicator or meet some other state-designated qualification.

Items 1, 6, and 7 concern restricted entry intervals, Item 2 concerns grower liability, and Items 3, 4, 5 and 8 concern noticing of pesticide application activities and other information dissemination requirements. Each of these three key issues will impact growers, agricultural chemical handlers, farm workers and, ultimately, consumers. Impacts are addressed in Section III.

In cooperation with NASDA, the CDFA conducted a survey of growers and agricultural commissioners in thirteen counties which confirmed the key issues listed above. The survey provided a qualitative assessment of the potential impacts and associated costs of the WPS. Comments were received from 49 respondents. Follow-up interviews with respondents and other industry leaders were also conducted.

II. Background

II. A. Uniqueness of California Agricultural Practices

California agriculture has received world-wide recognition for its quality, variety and abundance. It is one of the most diversified in the world with over 250 crops, many of which are only grown in California. California's eight million acres of cropland account for only two percent of the entire country's cropland, but produce over 50 percent of the nation's fruits, nuts and vegetables. However, California's ability to produce and make available the variety and abundance of crops to the State and the nation is due to a complex interaction of natural resources including soils, climate and water; grower knowledge and ability; and agricultural infrastructure.

For example, California is able to supply the state and the nation with an abundant supply of vegetables virtually year-round because of the variety of climatic conditions found in the State. The marine influence and the moderate climatic conditions of the central and southern coastal counties (Monterey, Santa Cruz, Santa Barbara, Ventura, San Diego Counties), the early warm winter climatic conditions of the southern counties (Riverside, Imperial Counties) and the moderate spring and fall conditions of the San Joaquin Valley provide for a variety of microclimates. This results in diversity of crop production systems, even for the same crop grown in different regions of the state.

Unlike some areas of the country where crop production is less diverse and where the annual rainfall is generally year-round, California rainfall occurs mainly from November through March and averages 23 inches per year statewide. Thus, California growers rely on a well-developed water storage and conveyance system and a variety of irrigation methods to provide needed water to their crops. This infrastructure allows for very efficient management of water resources, but requires precise timing of most field operations including the application of agricultural chemicals.

Since California agriculture is dominated by high value minor crops, field size tends to be smaller than those used for grain and other field crops. Fields of 30, 20 or even 10 acres are not uncommon for vegetables, vines, and tree fruits and nuts. These high value crops grown on smaller fields are also usually more intensively managed using human resources. Activities relating to weeding, thinning, irrigation, insect and disease control, and harvesting all encompass greater human input than larger plantings of field crops.

II. B. California's Pesticide Regulatory System

California has had a pesticide regulatory program since the passage of the Insecticide and Fungicide Act of 1911 and now is considered one of the most unique and comprehensive pesticide regulatory programs in the United States. California's pesticide regulatory program is multi-faceted, in that it contains a system for evaluating and mitigating environmental and human health impacts of pesticide use, for maintaining the safety of the pesticide workplace,

and for regulating the sale and use of pesticides. California is the only state currently requiring 100% pesticide use reporting and has one of the most comprehensive pesticide residue monitoring programs in the nation.

The California Department of Pesticide Regulation (CDPR) is the primary agency charged with carrying out these functions through an integrated network of programs which include Pesticide Evaluation and Registration, Worker Health and Safety, Environmental Monitoring and Pest Management, and Pesticide Use Enforcement.

The Pesticide Evaluation and Registration program evaluates pesticide products for efficacy, toxicological effects, phytotoxicity, environmental fate, product chemistry and residue methodology before they are allowed to be marketed. This program continuously evaluates pesticide products used in California for any actual or potential significant adverse effects to people or the environment.

The Worker Health and Safety Program evaluates the potential workplace hazards of pesticides, reviews studies on pesticide ingredients and application methodologies. This program also evaluates the results of investigations of pesticide-related illnesses, with an emphasis on preventing occupational illnesses and injuries. Actions have been taken on a number of unusual hazards with particular pesticide products by requiring reduced worker exposure. Over the past several years, this program has explored a variety of ways to improve and capitalize on information collected through illness investigations to better track acute health effects and predict persons at highest risk.

The Environmental Monitoring and Pest Management Program monitors the environmental fate of pesticides, and identifies and analyzes chemical, cultural and biological alternatives for managing pests. The function of the program is to protect the public and the environment from pesticide contamination (e.g., groundwater protection) through hazard identification, preventive planning, and the enhancement of regulatory controls which promote practices that are both environmentally sound and effective.

The Pesticide Use Enforcement Program assures compliance with state and federal pesticide laws. The CDPR oversees licensing and certification of pesticide dealers, pest control advisers (crop advisors), pest control businesses and applicators; has overall responsibility for pesticide incident investigations; administers the nation's largest state pesticide residue monitoring program; monitors pesticide product quality; and coordinates the 100% pesticide use reporting system. Pesticide use enforcement activities in the field are largely carried out by the county agricultural commissioners and their staffs with oversight by CDPR.

Current California Pesticide Worker Safety regulations specify work practices for workers who mix, load, apply, store, transport, or otherwise handle pesticides; and for workers who may be exposed to residues of pesticides after application to fields. The regulations require extensive communication from employers to employees about the safe use and handling of pesticides. Employers must provide specific information regarding prearranged emergency medical care facilities and provide training, prior to handling any pesticide, covering the hazards of pesticides, safety procedures, personal protective equipment, medical supervision, and decontamination procedures. Also, the regulations specify requirements for persons who may enter fields when exposure to pesticides or their residues can be reasonably expected.

II. C. Federal Worker Protection Standard

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) enacted in 1947, authorizes the federal government to regulate the marketing of pesticides and devices by requiring that they be registered with the USEPA. In 1972, FIFRA was amended to broaden federal pesticide regulatory authority by making it "unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling." The amendments also authorized the USEPA to provide regulations to carry out FIFRA. These revised provisions augmented USEPA's authority to protect persons and the environment from unreasonable adverse effects of pesticides.

In 1974, the USEPA promulgated regulations under the authority of FIFRA entitled "Worker Protection Standards for Agricultural Pesticides" which dealt only with the pesticide-related

occupational safety and health of workers performing hand labor operations in fields after the application of pesticides. An agency review of the federal worker protection requirements in 1983 concluded that the regulations were inadequate to protect agricultural workers.

In 1988, the USEPA issued a notice of proposed rulemaking to expand the scope of the "Worker Protection Standards for Agricultural Pesticides" to include all employees performing tasks relating to the production of agricultural plants on farms, in forests, nurseries, and greenhouses. On August 21, 1992, after review and analysis of comments and data in the record, the USEPA published the final rule of the Federal Worker Protection Standard in the Federal Register. The final rule of the revised standard prescribes regulation changes in pesticide label statements and the Worker Protection Standard contained in Parts 156 and 170, respectively, of the Code of Federal Regulations.

III. Types of Impacts

This section addresses the economic impacts on California growers of the federal WPS. The most serious impacts will come from the new REI restrictions. These impacts are discussed at length in Subsection A. Subsection B contains an examination of the change in the allocation of liability on the use of highly toxic active ingredients and on the frequency with which applications are contracted out to private applicators. Subsection C discusses other impacts from the regulations, including posting, oral warning and training.

III. A. Entry Restrictions

Currently, restrictions on entry by persons into an area treated with a pesticide are governed either by specific label statements prohibiting entry, or by specific provisions in the California Code of Regulations. Label statements regarding entry may either specify that no one may enter a treated area until "sprays have dried or the dusts have settled", or they may specify an exact interval of time that must be observed before entry may be allowed.

The federal WPS contains changes in reentry intervals that are of concern to California growers. A reentry interval that is currently specified as "when spray is dried" will be

changed to a minimum of 12 hours. After that time, an early-entry worker, such as an irrigator, would be limited to working only one hour in any 24-hour period. Because it takes a crew of irrigators most of a day to install pipe in a 20-acre field, they will be unable to take advantage of early entry and so must wait until the expiration of the entire reentry interval which is, at a minimum, 12 hours for toxicity category III or IV pesticides. The REI for toxicity category I pesticides under the WPS is 48 hours. Further, under California's arid conditions (less than 25 inches average annual rainfall), category I pesticides that inhibit cholinesterase will require a 72 hour REI.

Under current California regulations, irrigators wearing protective clothing can enter fields after the spray has dried, even if a longer reentry interval is in place. The present production practice for a number of California vegetable crops is to plant and, at the same time, spray a preemergence herbicide. Once the spray has dried, the irrigation workers enter the field to lay the pipe and prepare the field for irrigation which usually follows immediately. The regulations will force changes in these cultural practices that could result in yield losses for growers and higher food prices for consumers.

This section will examine the range of impacts of the changes in reentry regulations, using four California crops as examples: lettuce, broccoli, cauliflower and celery. These crops have much in common in that they all involve the use of preemergence herbicides for which timely irrigation is essential to achieve desired efficacy.

III. A. 1. Pronamide on Lettuce

Lettuce is grown in three regions in California. The Central Coast and San Joaquin Valley grow lettuce for the spring and summer markets, while lettuce is grown in the Imperial Valley for the winter market. In general, lettuce is planted every few days in order to have a continuous supply for the market.

Using current production methods, growers plant two rows of lettuce on raised beds and, at the same time, spray a preemergence herbicide, pronamide (Kerb), in two 4 to 5 inch wide

bands along the seed line. This work begins early in the morning when there is no wind in order to avoid drift of the herbicide spray and blowing dust. After the spray has dried, which may take as little as five minutes, since only 25 gallons of spray are used per acre and the weather is conducive to fast drying, pipe layers follow behind the planter. These workers lay pipes in the furrow, connect them, and prepare the field for irrigation that will occur soon after. Under the federal regulations, these workers will be prohibited from entering the field for four hours, and would then be permitted to work for only one hour. The task of installing irrigation equipment cannot be accomplished in this time. Consequently, workers must wait until the following day to enter the field to install the irrigation pipe. This delay in placing equipment implies a delay in wetting down the field and germinating the seed.

There are a number of problems that may result from this delay in irrigation. Lettuce growing areas in California are often subject to high winds during which soil that has not been watered down can blow away. This not only contaminates untreated areas, but may reduce the overall efficacy of the application, as herbicide leaves the field with the soil. Further, if temperatures are above 85 degrees after Kerb has been applied, the effectiveness of the herbicide can decline quite rapidly.

Another problem that may result from a delay in irrigation is uneven germination of the seed. Lettuce seed germinates rapidly once it absorbs water. Seed that is planted in damp soil may start germinating almost immediately, whereas seed planted in dry soil must wait for irrigation water to germinate. Under high temperatures, seed that has taken up water may enter a state of dormancy that prevents germination even after favorable conditions have returned. Therefore, the greater the grower's control of the environment of the seed, the more uniform the yield will be. Uneven seed bed moisture due to delayed irrigation leads to a lower germination rate.

There are few alternatives to Kerb in lettuce production. Kerb controls members of the mustard family, the nightshade family and volunteer cereals and wild oats, in addition to the array of broadleaf and grasses controlled by the other available herbicides. Kerb is also the

herbicide of choice because of its relatively low cost. Some growers in the Imperial Valley have changed their growing rotation of wheat-lettuce-wheat, eliminating wheat in order to maintain the use of Kerb on lettuce.

Balan was used for weed control in lettuce before Kerb was available and is used today in wheat-growing areas of the Imperial Valley. Balan must be mechanically incorporated into the soil at an additional cost of \$35 per acre. The other alternative to Kerb is hand weeding. The costs of hand weeding are prohibitive at between \$140 and \$240 per acre. Due to the high cost of the alternatives, most growers will continue their use of Kerb following imposition of the federal WPS and accept the possibility of lower yields in the event of high winds, high temperatures or uneven soil moisture.

The impact analysis considers two loss scenarios: a one percent and a five percent reduction in lettuce yield. The larger loss represents a worst-case outcome that is expected in the event of adverse weather conditions. The model envisions no change in cultural or harvest costs resulting from reduced efficacy of Kerb. Since the adverse effects of weather are unanticipated at planting time, the model also does not consider the response of other growing regions, but instead takes their production as constant.

Basic values for the impact analysis are taken from a study by Lichtenberg et al. (1988) for the USEPA on the impacts of canceling parathion for use on lettuce. These basic values include regional output and grower prices. The demand elasticity for lettuce estimated by Lichtenberg et al. is -0.10, implying that a one percent decrease in output will result in a ten percent increase in price. Interviews with farm advisers and growers in the three lettuce growing regions reveal that virtually all growers in the Central Coast and San Joaquin Valley currently use Kerb, while 20% of lettuce growers in the Imperial Valley use Kerb.

Under the five percent yield loss scenario, US lettuce output declines by 4.24% in the spring and summer months (the output decline is less than five percent since not all lettuce is grown in the Central Coast and San Joaquin Valley), resulting in a price increase of over \$4 per

carton. In the winter months, when the Imperial Valley is an important producer of lettuce, US lettuce output drops by 0.92% and grower price increases by over \$1 per carton. As a result of these price increases, US consumer welfare drops by \$165.57 million per year.

When yield drops by one percent as a result of the reentry restrictions, output and price change as before, but by smaller amounts. Consumer losses in this case amount to \$33.12 million per year.

III. A. 2. Chlorthal Dimethyl on Broccoli and Cauliflower

Broccoli and cauliflower are grown in the Central and South Coast regions, and in the Imperial and San Joaquin Valleys. In the Imperial and San Joaquin Valleys, broccoli and cauliflower are generally grown as part of a rotation that may include tomatoes, cotton, cereals or other row crops. In the coastal regions, broccoli and cauliflower are commonly planted successively throughout the year without rotation to other crops.

As with lettuce, most growers currently plant broccoli and cauliflower early in the day to avoid heat and wind, then immediately spray the field with a pre-emergent herbicide, in this case, chlorthal dimethyl (Dacthal). The herbicide generally dries in five minutes, after which workers bring in and set up irrigation sprinklers. As an alternative, some growers first spray the field with Dacthal, then incorporate it into the soil, plant the broccoli or cauliflower, and follow with furrow irrigation. In either case, maximum efficacy is attained when irrigation occurs soon after the herbicide has been applied or incorporated.

There are few registered alternatives to Dacthal for broccoli and cauliflower production. Dacthal targets a relatively broad range of weeds, including broadleaf annuals and grasses, with only weak effects on members of the mustard family, which includes broccoli and cauliflower. Of the other registered herbicides, only Prefar (Bansulide) is a substitute, and it is only effective against grasses, not broadleaf annuals. Although growers sometimes use Vapam (metam-sodium) on nutsedge or nightshade, it is not used against broadleaf annuals and grasses because it has a long pre-plant degradation period. Many

growers use a post-emergent herbicide, Post (sethoxydim), to target certain volunteer cereals that Dacthal cannot control.

The base values for production and grower prices are those reported in the California Agricultural Statistics Service Statistical Review. Pesticide use data is from the Pesticide Use Report prepared by the California Department of Pesticide Regulation. The data reflect values for 1991. The demand elasticity values for broccoli and cauliflower were estimated in previous studies. The estimated demand elasticity for broccoli of -0.19 implies that a one percent decrease in output will result in a five percent increase in price; the estimated demand elasticity for cauliflower of -0.31 implies that a one percent decrease in supply will result in a three percent increase in price. In calculating actual losses, quantities and prices were adjusted to reflect the proportion of U.S. output produced by California growers, and the proportion of harvested acreage treated with Dacthal. California growers produce 90% of the U.S. broccoli crop, and Dacthal was reportedly used on approximately 93% of California broccoli acreage in 1991. California grown cauliflower amounts to approximately 77% of total U.S. cauliflower production, and approximately 67% of California cauliflower acreage was reportedly treated with Dacthal in 1991.

Under the five percent yield loss scenario, U.S. broccoli production falls by 4.18%, resulting in a price rise of \$5.72 per hundredweight. As a result, U.S. consumer welfare falls by \$48.61 million per year. For cauliflower, a five percent yield loss for treated fields implies a decline of 2.6% in total U.S. cauliflower production, resulting in a price rise of \$2.24 per hundredweight. U.S. consumer welfare drops by \$12.52 million per year. Simulations under a one percent yield loss scenario result in similar changes, but smaller magnitudes. Consumer welfare falls by \$9.58 million as a result of reduced output and price rises for broccoli, and by \$2.45 million for cauliflower.

III. A. 3. Prometryn on Celery

Celery is grown primarily in the Central and South Coast regions. California growers produce over 73% of the total US celery crop. According to the 1991 Pesticide Use Report, approximately 79% of California celery acreage was treated with the herbicide Prometryn, which will be subject to the changes in reentry regulations discussed earlier in this report. Using an estimated demand elasticity of -.25, simulations based on a five percent yield loss resulting from those reentry restrictions show a 2.9% decline in total US celery production, resulting in a price increase of \$1.19 per hundredweight. This reduction in supply and rise in price would result in a loss to consumers of \$17.08 million annually. Under the more optimistic scenario in which yields fall by one percent, the price of celery rises by \$0.24 per hundredweight, and the loss to consumers amounts to \$3.35 million per year.

III. A. 4. Other Examples and Impacts

This section has presented possible economic impacts of reentry restrictions for a few crops in California. There are a number of other cases where reentry restrictions may reduce yields directly through their effect on accepted cultural practices or by reducing the effectiveness of the pesticide. These chemicals and crops include linuron (Lorox) in carrot production, napropamide (Devrinol) in tomatoes, and Dacthal in brussels sprouts, cabbage and onions.

The CDFA survey highlighted other specific impacts of concern to growers regarding REIs. The imposition of REIs of 12 to 72 hours will cause more time and effort to be spent by growers to schedule work crews. The preemption of the "until dry" or the "until settled" provisions in the California regulations and the variety of intervals used in the WPS will greatly complicate crew scheduling. If prolonged early entry field work is unavoidable, farm labor costs for those activities will increase substantially, due to the "one hour in 24 hours" rule. These concerns deserve additional investigation.

III. B. Farmer Liability

The standards provides that the grower is ultimately responsible for compliance with the standard and for any violations that occur during application. This standard is stricter than

the current practical standard in California. Current California regulations specify that employers are responsible for the safety of their employees and for the transfer of necessary information to his contractor (custom applicator or farm labor contractor). In addition, the contractor is held responsible for compliance with all regulatory requirements applicable to his or her own employees. The net result is that enforcement actions are taken against the employer most directly responsible for the pesticide violation.

According to a recent study conducted by Zilberman et al. (1993) on the nature of pesticide use decisions and the identity of pesticide decision-makers, many toxicity category I and II pesticide applications are contracted out. The reasons underlying this delegation of work are that specialized equipment is required to apply these chemicals and this equipment is often quite expensive. Further, the dangerous nature of these materials requires special skills, and many farmers are unwilling to place themselves or their workers at risk by applying highly toxic chemicals themselves.

A further pattern in application noted by Zilberman et al. is that there is an important relationship between farm size and application behavior. Generally, large farms have adequate human and financial capital to invest in the specialized training and equipment necessary for application of highly toxic pesticides. Thus, these farmers are much more likely to apply all of their own pesticides. Therefore, it is important to distinguish between the impacts of a new allocation of liability on large and small farms.

The impact of the new allocation of liability on large growers is probably negligible, since these farmers currently apply the majority of their chemicals themselves and are responsible for any violations of federal and state worker protection standards that may occur.

For small farmers, since most applications of toxicity category I and II pesticides are contracted out in a regime where the grower has limited practical liability for violations of worker protection standards, it is natural to ask whether the proposed changes in the assignment of liability will result in a change in the number of applications being contracted

out by small farmers and if there will be a change in the types of pesticides being applied.

Zilberman et al. (1993) point out that growers responding to their survey indicated that the specialized knowledge of custom applicators was an important factor in contracting out application. It seems unlikely, then, that assigning ultimate responsibility to growers that contract out applications will result in more growers applying pesticides themselves. However, it is likely that growers will monitor closely the activities of their applicators more closely if the proposed federal WPS are adopted. This change in behavior will increase growing costs and place further demands on growers' time.

While the regulations will probably have little effect on the number of applications being contracted out, it is possible that assigning ultimate liability to growers for violations committed by contractors may result in less frequent use of toxicity category I and II pesticides by small farmers. The loss of some highly effective and economical pesticides by small growers only is an unanticipated, inefficient and inequitable consequence of the WPS.

It is possible that some growers who previously contracted out applications will begin applying pesticides themselves to ensure that there are no violations of any worker protection standards. This response to the new federal standards has several negative economic consequences. Fixed costs will be duplicated when growers invest in specialized equipment, training and protective gear. A key benefit of the existing system of specialized applicators is that investment is minimized in one-time costs, freeing capital for other, more directly productive uses. Additionally, if some growers decide to perform applications internally, a greater number of farmworkers will be conducting those applications, resulting in increased pesticide exposure. Thus, instead of small number of specialized workers doing applications more or less full-time, the federal WPS may result in a greater number of workers applying pesticides occasionally.

The total economic impact of the change in liability on small farmers will result from the effective loss of some category I and II active ingredients, loss of productivity through

increased time monitoring contractors, and duplicative capital expenditures on equipment and training.

III. C. Specific Application Information

California currently requires the maintenance of pesticide use data by each farm in the State. This data must be kept for two years at a central location on the farm; usually this is the central office. The data is generally kept in a file, and the workers must be permitted to see the data if they ask for it. The new federal EPA worker protection standards vary from the California regulations in that the data must be posted in a central location where the worker can access it without asking for it and, in some cases, it must be posted before the application takes place.

The USEPA assumes there is one central location per farm. In fact, farms in California may have multiple non-contiguous fields. Costs could then be incurred to identify fields that had been treated, create notices and post those notices at the headquarters office or at satellite locations, since contracted employees typically meet in the field rather than at a central location. If the USEPA were to determine that a farm with multiple non-adjacent fields needed more than one "central" location, the costs to growers would increase according to the amount of time it would take a worker to travel to a satellite posting site. One (not atypical) farm has 20 fields spread out over a 60 mile area.

Many vegetable farms in California grow a number of different crops at any one time. Growers have indicated that, depending on the size of the ranch and the number of crops grown throughout the year, one grower could be responsible for 4,000 pesticide applications per year. For a large farming operation such as this, the annual cost would be considerable. A smaller diversified grower would notice approximately 400 pesticide applications throughout the year to comply with this new regulation. Over the entire Salinas Valley, with its long growing season and wide array of crops, over 100,000 pesticide applications may occur each year. This translates to a considerable cost to growers with an unknown health benefit accruing to workers reading the 100,000 notices.

III. D. Notice of Application

California currently requires employers to give oral warnings to employees who might reasonably be expected to enter an area that is being treated or is under a restricted entry interval. The federal WPS extends this requirement to any employee who might come within one quarter mile of an area being treated or under an REI. As mentioned earlier, many vegetable farms in California consist of a number of small acreage fields growing a variety of crops throughout the year. As a result, at any given time, a large number of workers (irrigators, tractor drivers, hoeing and harvesting crews, and contractors) may be working within a quarter mile of a field that has an REI in place. However, the federal standard requires an agricultural employer to orally warn only his own worker-employees but not his neighbor's worker-employees.

Assuming that this complex field layout for vegetables will cause most farmers to elect to notify all workers daily of treated fields and fields under REI's, this will result in a cost dependent on the supervisor's and field workers time. Vegetable farms often have crews of 20 to 30 workers reporting directly to a field to perform a specific task. A large farm with 600 fieldworkers would incur a considerable costs per day of oral warnings, if either workers or supervisors must gather in a common area to receive information about the current day's treatments or rescheduled treatments from the day before.

III. E. Field Posting

California currently requires fields to be posted when a pesticide of category I toxicity is applied to any of 13 "labor-intensive" crops and the REI is two days or more, or when any pesticide is applied and the REI is greater than seven days. The federal WPS require posting of all fields treated with materials having category I dermal toxicity. At least 12 pesticides used in California fall into this category. A number of the crops using these materials have not been designated "labor-intensive", so additional posting will be required under the new standards, increasing grower costs for the signs and the posting.

III. F. Worker Training

Worker training is another requirement of the new standard that will create costs for growers. Growers must assure that all employees who have worked six days or less (after August, 1997) have received pesticide safety training within the last five years. Early entry workers are not eligible for the six day grace period. A certified applicator or trainer must cover eleven topics in nontechnical terms and in a manner understandable to the worker.

Currently, California law requires that field supervisors receive pesticide safety training, but does not require direct training of individual workers, unless they are pesticide handlers. Many growers in the CDFA survey expressed concern over these provisions, not only because of the hours needed to complete the course, but also because the standard does not recognize the transient nature of the work and the high turnover of workers. Ongoing training sessions requiring the continual services of a trainer would be required, particularly since it would be hard to verify that any worker had received training at another farm within a five year period. The logistics required to coordinate this training between employers and labor contractors will be daunting.

IV. Conclusions

The imminent federal worker protection standard considered in this analysis is more restrictive than standards currently in place in California. Changes in three principal types of regulations are of concern: restricted entry intervals following application of pesticides, allocation of liability for violations of the standards, and provision of information concerning application. This analysis shows that all three types of regulations will have significant consequences for California growers and consumers of the food they produce.

Reentry restrictions will result in important changes in standard cultural practices, particularly involving irrigation following applications of herbicide and seed. The delay in irrigation resulting from the reentry restrictions may result in lower yields in the event of high winds,

high temperatures or uneven soil moisture. Reduced yields manifest themselves in lower total output and increased food prices. Consumers must be aware that they ultimately foot the bill for more restrictive worker protection standards, in this case totalling \$232 million for the four crop/herbicide situations studied.

The federal standard shifts the liability for violations of the regulations committed by contractors such as pesticide applicators or farm labor contractors to the grower. The impact of this change in the law will vary according to farm size. Large growers who do much of their own application will not be significantly affected by the new regulations as they bear almost all responsibility under the current regime. Small farmers, however, will experience more severe impacts. These growers do not have the resources necessary to apply all of their own pesticides and often must rely on other entities, including large growers, to perform this function. Shifting all liability for violations of the worker protection standard to small farmers will probably have little effect on the frequency with which these growers apply chemicals themselves, but may result in a shift from those chemicals that have a high toxicity rating, often combined with higher effectiveness, that will remain in use on larger farms. The small grower may also feel it is necessary to physically supervise his contractors, which further reduces the efficiency of his operation. Small growers may therefore be at an even greater competitive disadvantage relative to large growers with specialized staff, equipment and knowledge.

Posting and noticing costs appear minimal when compared with the value of the crops that will be affected. However, there is no question that these costs add to the regulatory burden of doing business. When those costs can be balanced against a tangible health benefit, there is justification. However, the value of bombarding the worker with hundreds of additional warnings remains to be established.

California growers produce a unique combination of crops under growing conditions that are unlike those in any other region of the country. As a result, the federal Worker Protection Standard will have impacts on farmers in this State that are unlike those in the Midwest or any other region. The special nature of California agriculture implies that the costs of these regulations may be significant and that policy makers should take a closer look at regional characteristics when formulating efficient and equitable regulations.

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POSITION STATEMENT

Testimony of
Keith Kelly, Director
Arizona Department of Agriculture
before the
House Agriculture Subcommittee on
Department Operations and Nutrition
U.S. House of Representatives
November 10, 1993

re: The Worker Protection Standard for Agricultural Pesticides

Good morning Mr. Chairman and members of the subcommittee. Thank you for the opportunity to testify on the Environmental Protection Agency's (EPA) new Worker Protection Standard for Agricultural Pesticides (WPS). I am Keith Kelly, Director of the Arizona Department of Agriculture. Arizona agricultural producers sincerely appreciate this committee's interest in the effects this new regulation will have on their ability to produce profitably in an increasingly competitive world market.

Arizona is a state with an existing pesticide worker safety program that affords protections to workers without excessive burdens on industry. We feel that there is merit to the new federal Worker Protection Standard, but there are several serious concerns with the Standard in its entirety.

Today I want to specifically focus my concerns on the restricted entry interval (REI) required by the regulations. This requirement, which will conflict with Arizona's very successful program, will have a significant impact on irrigation production practices in my state. Before discussing the REI, however, I would like to briefly outline the concerns I have with other areas of the regulation.

FIELD AND GREENHOUSE POSTING REQUIREMENTS

Arizona's existing rules already require posting under certain conditions. We believe there are two central issues here, the first of which is the problem of having accurate information about the application in a timely way in order to be able to comply. Many of our fields are physically separated by great distances and the treatment of the fields is subject to the elements of weather. Because many pesticide labels have restrictions pertaining to windspeed and direction, the timing of the applications cannot be scheduled with any certainty and, therefore, field posting may not necessarily be in place in a timely manner. Further complicating this issue is the fact that specialty crops are frequently grown in small sets and parcels. This may result in several different postings and REIs in a small geographic area, thereby resulting in confusion for the employees, contractors and others working in the area.

The second issue relates to the question of who is responsible to see that the field posting is accomplished. Growers frequently utilize pest control advisors (PCAs) who deal directly with the custom applicator hired

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to make the applications. Since the PCA is responsible for coordinating the application, the opportunity for miscommunication is lessened if the PCA also posts signs. Growers believe they should be allowed to pass on the responsibility of posting to those parties that are directly involved with the pesticide recommendation and application.

Greenhouses have other unique problems with this portion of the WPS regulations. If a dermal toxicity category I product is applied to a single bed in a greenhouse, that greenhouse cannot have any activity performed in or around it unless the employee is in the required full personal protective equipment (PPE) and has been trained as a pesticide handler.

ORAL WARNINGS

This is an especially difficult requirement. From a regulatory position, it will be virtually impossible to enforce this provision for the simple reason there is no documentation of the fact that the warning was given. It will be one person's word against another. How can an employer anticipate which of his employees may wander within 1/4 mile of treated areas? The goal of WPS is to reduce exposures. We should also be concerned with not only employees, but also government scouts, pest advisors, trespassers, neighbor's employees, etc. Posting of warning signs will better attain the goal of keeping unprotected workers out of treated areas.

FIELD POSTING OF APPLICATION SPECIFIC INFORMATION

We believe that specific treated area information should be kept and made available to employees at a centralized location, not posted at the field. This would satisfy the intent of making exposure treatment information available in the event medical attention is required without the extra burden of generating and posting information. Additionally, in the case of contract labor, field workers may work in several different fields for several different growers in a short period of time. Knowing exactly what was the source of chronic exposures will be difficult, and field site posting will not alleviate this issue.

PPE REQUIREMENTS FOR ENTRY DURING A REENTRY INTERVAL

Problems arise primarily with employees having to don full personal protective equipment (PPE) to irrigate crops, check to determine the efficacy of the pesticide application or determine other factors affecting general crop production such as water, fertilizer, frost protection or cultivation needs. Louisiana Commissioner Bob Odom will discuss this issue in more detail this morning.

EQUAL RESPONSIBILITY OF THE FARMER AND CONTRACTORS FOR COMPLIANCE

It is strongly felt that the grower must have the ability to transfer liability via contracts to highly trained professionals capable of maintaining their level of expertise. The new federal Standard would unfairly hold farmers liable for the activities of these contract professionals such as pest control advisors, farm labor contractors and commercial applicators. It is becoming extremely difficult for any grower to stay abreast of the constantly changing myriad of regulations that they are subject to, much less oversee all the people with whom they contract.

REQUIREMENTS FOR CROP ADVISORS

The definition of crop advisor in the WPS is far too encompassing. It includes not only our pest control advisors but also any supervisor or foreman who might enter a field to check on the general condition of the crop. It is unreasonable to require an Arizona licensed pest control advisor (PCA) to carry all potential PPE that may be required by any label plus a decontamination facility to every field they might visit in any given day. Not only is the level of equipment inappropriate but it will severely limit the PCAs ability to perform his services. It is common practice for a PCA to visit in excess of 50 fields per day in a geographic area that could be as large as 250 square miles or more.

TRAINING REQUIREMENTS FOR HANDLERS AND FIELDWORKERS

We support the concept of training of both handlers and fieldworkers. We do not, however, believe the current system of verification is adequate. We believe the system is prone to counterfeiting and has substantial problems associated with accurately identifying individuals. Sufficient time and resources (dollars) are not available to meet the overly ambitious implementation schedule.

RESTRICTED ENTRY INTERVAL

Let me now turn to the issue of restricted entry intervals. The regulation prohibits hand labor cultural activities during an REI. Any other activity, such as irrigation or machinery operation is limited to one hour per employee during any 24-hour period. The REI will be from 12 hours to 3 days depending on the toxicity of the pesticide ingredient and average rainfall. Entry during the first 4 hours is limited to applicators and crop advisors wearing all required personal protective equipment.

The prohibition of routine early reentry for short-term tasks with no hand labor for no more than one hour in a 24-hour period will impact several facets of agricultural production in Arizona. The production of crops is entirely dependent upon irrigation, and crop losses or yield reductions will result if irrigation timing is not strictly adhered to. Further complicating this problem is the fact that much of our cropland is irrigated via "project" or irrigation district water. When it is your turn to receive water, you must use it or wait until your time comes around again.

There are basically two types of irrigation used in Arizona — flood irrigation and sprinkler irrigation. Farmers use both types of irrigation depending on the needs of the particular crop and time of the year. It is quite possible to have an irrigator perform work in the treated area for longer than one hour in a 24-hour period because sprinkler pipes break or shovel work needs to be done during irrigation. Most of the time irrigators normally do not enter the vegetative portions of the field, but instead remain on the canal banks, tail ditches and head lands.

Pesticide applications and the irrigation of fields are two operations that frequently overlap, especially in the warm months of September and October. Some farmers also use irrigation to aid in pest control. If the furrows are full of water, certain pests will not be able to hide there; the irrigation water helps to obtain a better pest kill. When pesticide applications and irrigations cannot be properly coordinated, the result will be yield reductions due to insect pressure or lack of water. Increased insect pressures will require additional pesticide applications adding not only to production costs, but also increasing opportunities for occupational exposure and environmental hazards. If irrigations are delayed for three days because irrigators cannot enter the field, the entire field will be jeopardized from a cultural standpoint. Proper timing of irrigation water as well as fertilizer application is extremely important to bring the crop to its maximum potential yield while preserving quality.

To complicate matters, there is a provision in the standard that extends REIs from 48 hours to 72 hours in those areas that receive less than 25 inches of rainfall per year. There is no commercial crop production area in Arizona that receives more than 25 inches of rainfall per year, thus increasing our concern for dealing with mechanics of irrigating crops in Arizona.

In contrast to the new federal regulation, Arizona's existing state rule, adopted in 1989, permits "no contact" early reentry specifically for irrigating and operating tractors and other machinery, provided "suitable protection such as chemical resistant boots and gloves" are used. Our experience in administering this rule has disclosed no exposure incidents related to these workers entering treated areas before the REI has expired either through our enforcement programs or through the Arizona Department of Health Services Pesticide Related Illness Surveillance Program. In addition, the collective experience of Arizona farmers indicate that at least for the past 15 years, they have never known of a problem with an irrigator experiencing a pesticide related illness. Arizona requires, by statute, the medical profession to report all pesticide related illness to the state.

Frost protection may be a similar issue (although it may fall under the federal WPS agricultural emergency exemption). Early reentry for lighting smudge pots, activating, monitoring or repairing fans etc. is required at times to protect crops. Lesser degrees of protective equipment may be utilized to perform these short term tasks which involve no direct contact with the treated plants.

As the REI standard exists now, as a regulatory agency charged with enforcing this provision we believe this restriction is totally unenforceable. How can our field staff document the amount of time hundreds if not thousands of fieldworkers spend irrigating crops under an REI? In the case of a complaint from a worker, documentation for prosecution of an employer will be nearly impossible as it will be one person's word against another's.

The industry will basically have four options under the program:

- 1) *Hire more workers.* Are there enough additional, skilled, part-time workers available? Probably not as employees who are limited to a few hours work are difficult to employ. Smaller operations may not be able to expand their work force to meet these irrigation schedules. Some farmers feel that to comply with this requirement they would have to schedule 24 irrigators for each treated and irrigated field to ensure compliance.
- 2) *Plant winter vegetables later in the year during cooler fall months in order to reduce irrigations and pest control applications.* This could lead to nationwide shortages of winter crops such as lettuce, broccoli and cauliflower. The nation's supply of winter lettuce overwhelmingly originates in Arizona.
- 3) *Abandon closely timed irrigations and ground applications in favor of aerial applications.* This results in increased pesticide usage due to decreased effectiveness of the pesticide application at a time when the Administration and agricultural industry is moving toward "reduced" and more effective use. These extra pesticide applications may actually increase worker exposure to residues, increase the potential of pesticide drift to non-target areas, and exacerbate some of the issues associated with the ag-urban interface in Arizona.

This point raises another concern that state agricultural officials have with the new WPS. The Standard will encourage agricultural producers to move away from integrated pest management (IPM) practices due to these unworkable WPS regulations at a time when efforts are being made to increase IPM practices. The Administration proposal for pesticide regulation reform calls for a joint EPA-USDA chaired effort to, within one year, develop commodity-specific pesticide use reduction goals. Under the proposal, the statute would clearly state a policy goal "favoring reduced use and direct federal agencies to take a leadership role in promoting use reduction and IPM in their programs." The plan further calls for implementation of IPM practices on 75 percent of all production land in seven years. This is a prime example of the left hand of bureaucracy developing conflicting regulations with the goals and policy of the right hand.

- 4) *Do not comply with the Standard.* Growers may have to choose between violating the regulation or losing crops and going out of business. In this scenario, both industry and workers lose; and regulators will lose credibility with workers, industry and the general public.

There must be exemptions in the WPS for early entry into treated areas where workers will not come into significant contact with plant surfaces. Arizona's experience demonstrates a level of protective equipment could be prescribed to prevent contact with plant, soil or water surfaces similar to our procedures of requiring the use of chemical resistant boots and gloves to irrigate crops under an REI.

CONCLUSION

Texas Commissioner of Agriculture Rick Perry today properly outlined the position of the National Association of State Departments of Agriculture (NASDA). If EPA delays the enforcement aspect of the Standard, the states and the Agency would have an opportunity to solve the problem areas of the regulations, issues which, to date, EPA has failed to address or even discuss. It is absolutely essential that EPA work with the states to solve these very serious problems. I, for one, am not willing to sacrifice worker protection simply to please the whims of a federal regulation, which at best is unclear as to whether it will provide any significant additional protection to workers from pesticides; and, in fact, may lessen the protective measure already in place in Arizona. I would rather walk away from EPA's federal pesticide regulatory program than create an atmosphere of confrontation which damages the economic viability of Arizona's agriculture and decreases worker protection.

Thank you Mr. Chairman for this opportunity to share Arizona's concern regarding this new federal regulation.



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POSITION STATEMENT

Testimony of
Fred L. Dailey, Director
Ohio Department of Agriculture
before the
House Agriculture Subcommittee on
Department Operations and Nutrition
U.S. House of Representatives
November 10, 1993

re: The Worker Protection Standard for Agricultural Pesticides

Good morning Mr. Chairman and members of the subcommittee. Thank you for the opportunity to testify before this panel on the Environmental Protection Agency's (EPA) new Worker Protection Standard for Agricultural Pesticides (WPS). I am Fred Dailey, Director of the Ohio Department of Agriculture (ODA), and serve on the National Association of State Departments of Agriculture (NASDA) Worker Protection Standards Task Force. I applaud this committee for investigating the effects this new regulation will have on American agriculture and the state regulating agencies.

The EPA revised Worker Protection Standard is the culmination of a painstaking series of public comment periods and negotiations taking 9 years to complete. This product is broad in its scope and lengthy in detail. The many groups with an interest in this issue continue to spar with regulatory agencies over the implementation process. It is the state lead pesticide agencies, such as the Ohio Department of Agriculture, that are now moving to the forefront of the communication and enforcement process as we approach the first critical deadlines for implementation.

The revised WPS should provide needed safeguards in the area of personal protection to agricultural pesticide users, agricultural workers and very importantly to farmers and their families. However, a most distasteful result of this rule, along with its benefits, are the attendant costs associated with its implementation, which in this case, will fall primarily upon agricultural employers and individual farmers.

Before I discuss specifics of those areas of disagreement with the WPS, I would like to emphasize some of those areas where there is general agreement with the benefits of this program.

Improved Pesticide Labels — Revised personal-safety language will be required on pesticide labels, and should serve to reduce pesticide exposure and risk to all persons using agriculturally-labelled pesticides.

Communications — Communication of risk-related information to and among those persons exposed to pesticides is fundamental to the rights of workers to know and understand their occupational risks.

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Training — The WPS emphasizes the value of training, which must be the foundation for each step of the WPS implementation process. Training components directed at agricultural employers will act as a strong incentive for farmers to improve their own safety procedures while at the same time assisting them in the training of their employees.

WPS CONCERNS

As the state lead agencies move ahead with communication of the standard to impacted groups, the loudest reactions are being heard from farmers and other affected employers who believe that key portions of the WPS place an unfair or unbalanced hardship on their businesses.

Criticism of EPA's revised WPS has not abated in spite of finalization of the agency's new rules. Labor groups are dissatisfied with the training requirements, field posting and other provisions. Pesticide registrants have been critical of insufficient time lines for review and distribution of the revised pesticide labels. Pesticide user advocates cite the overall complexity of the rule and incumbent liability placed upon farmers should compliance mistakes put them at risk for enforcement penalties; and certainly, some level of inadvertent errors seems inevitable. Increasing the potential for misinterpretation of the legal requirements is the fact that state lead agencies and university extension services, charged with the education and compliance assistance components of the implementation process, are receiving from federal agencies only a small portion of the funding needed to adequately prepare the training materials and to disseminate the information to farmers, workers and handlers on a timely basis. Additionally, EPA has failed to provide the need educational material to states within EPA's prescribed timelines.

NOTIFICATION COMPLEXITY

The complexity of the WPS, which is the basis for much of the criticism by agricultural employers, can be seen in the following summary of notification requirements.

1. The WPS requires agricultural employers to provide notification to their employees of pesticide applications and crop restricted entry intervals prior to any potential worker exposure.
2. Notification can be provided by oral warning and/or posted warnings. Oral warning must be provided in a manner each employee can understand. The content of the communication is spelled out in the WPS. Posted warnings consist of an EPA approved format which is required to be placed so that it is visible from all points of entry into a pesticide treated area. Both English and Spanish words are required to be used on all posted warnings.
3. For greenhouses, the posting method must be used; oral warnings are not sufficient. For certain high risk pesticides, the label will require that both oral and posted warnings be given.
4. Some exceptions to the notification requirements are allowed whenever:
 - a. A worker will not enter a greenhouse during a pesticide application or until after expiration of a restricted entry interval.
 - b. A worker will not enter or walk within 1/4 mile of a pesticide treated area prior to expiration of a restricted entry interval.
 - c. If the worker applied or supervised the pesticide application and is aware of the required information.

In the agency's intent to address an already complex issue, the EPA has responded with a lengthy and equally complicated solution. While such solutions may be understandable by the community of pesticide

manufacturers and distributors who are accustomed to government regulations, the revised WPS attempts to treat farmers in the same manner.

There are obvious differences between large corporations and family farms. Farmers do not employ full-time attorneys to interpret and develop regulatory compliance programs for them. Farmers do not employ risk control managers to implement and oversee compliance with regulatory mandates. The WPS does not recognize the differences that exist between large corporate farms with hundreds of workers and the many small farms that may only employ a few intermittent seasonal laborers.

The complexity of the rule puts farmers at great financial risk. The cost of compliance may be insignificant when compared to a much greater risk for tort liability resulting from technical violations of the rules which may not have caused any actual harm to a worker. This same complexity of the WPS creates a strong probability that every agricultural employer will, at some time be in violation, despite his best intentions to comply.

Several examples may better illustrate just how the notification requirements may be impractical or unworkable for different agricultural employers. Specialty food crop growers have traditionally been the focus of agricultural worker safety programs because of their heavy reliance on migrant farm workers. Our examples include sample farming operations, one with migrant labor and one without.

Vegetable Farm Example

A fresh market vegetable grower produces over 30 different crops on over 500 acres of land. Many crops are grown sequentially. Crop production blocks may be less than one acre. Different crops may be grown side-by-side with no separating driveways or drainage ditches. During some years, like 1993, certain blocks of crops will each require 10 or more pesticide applications to control pests such as aphids, leafhoppers and other insects. Collectively thousands of distinct pesticide applications requiring notification to workers may be made during a production season. Over 200 non-English speaking field workers are involved with the hand labor operations. Workers originate or travel from Cambodia, Haiti, Laos, Mexico or Puerto Rico. In this case, the quarter mile exemption from notification requirements is not applicable. The option of providing oral warnings for each application to the hundreds of field workers would create a liability problem and notification nightmare which forces the grower to perform field posting for all pesticide treatments.

Another step faced by the employer is acquiring training materials, for all his pesticide handlers and workers, written in an appropriate language. The task is further complicated by the requirement placed upon the agricultural employer to provide verbal training in a language that every employee can understand. Attempting to identify all languages and dialects spoken by segments of a worker population could be a significant task.

As stated previously, the employer will post all treatment areas with WPS warning signs before the application. Signs must be removed within 3 days after the restricted entry interval and before worker entry. The logistics of handling the posting requirements in this situation is extensive and would probably require a full-time employee. The farmer is concerned that the proliferation of signs in the field will diminish the impact of signs posted around individual fields.

When both oral and posted warnings are required by the pesticide label, the employer is required to post and communicate in a language understood by every worker providing the information relevant to the pesticide applications requiring double warnings that have occurred or are scheduled to occur. Note the information which must be communicated orally:

- location and descriptions of all pesticide treated areas,
- time during which entry is restricted,

- instructions not to enter treated areas during restricted-entry intervals.

The volume of pesticide application record information generated by such an operation is best handled by computer storage systems. Yet, the grower must make specific pesticide use information available at the central location for all of his field workers and handlers. The employer must be able to translate computer based formats into printed information that can be understood by all his workers.

Grain Farm Example

Grain crop producers are the largest group of agricultural employers. However, they employ fewer outside workers per farm than do specialty crop producers such as nursery, fruit and vegetable growers. Communication requirements under the WPS differ significantly for this group because 30 to 50 percent of herbicides used by grain crop producers are custom applied and herbicides represent 80 to 90 percent of their pesticide use.

The WPS requires a custom pesticide applicator to:

1. Notify the farmer about the crop location to be treated.
2. Set the time and date for pesticide application.
3. Identify the pesticide product, EPA registration number and active ingredient.
4. Inform the farmer about specific reentry intervals for each pesticide.
5. Inform the farmer if double warnings are required.
6. Inform the farmer of other worker safety precautions from pesticide labels.

Simultaneously, the farmer must provide the custom applicator with similar information if the farmer himself or another custom applicator has applied a pesticide within 1/4 mile of an area that might be entered by the custom applicator or his employees.

This communication requirement places a tremendous burden on the farmer and custom applicator. During the rush to accomplish spring field operations, when most grain crop pesticides are applied, farmers and custom applicators regularly work long hours, in many cases custom applicators provide services 24 hours per day. In order for the farmer and custom applicator to satisfy the WPS requirements, both parties will have to be in regular communication. Since both the farm and the custom applicator will be operating away from their business offices, cellular telephones or two-way radio offers the only practical means for the farmer and his custom applicator to satisfy the WPS requirements. Currently, cellular telephone service is not universally available in all rural areas and the farmer is not likely to be available for two-way radio communication at all times.

For those part-time farmers who work full-time away from the farm, the communication requirement with their custom applicator creates significant problems. The part-time farmer is likely to be unavailable for telephone communication at his place of off-farm employment. According to the WPS, the custom applicator cannot perform pesticide application for this farmer until the communication requirements are met.

Considering the hectic pace of field operations during crop planting season and other factors such as weather delays, equipment breakdowns and various supply problems, disruption in the schedules of the farmer and custom applicators will occur. Each change in schedule, for either the farmer or the custom applicator, has potential to modify compliance with WPS communications requirements.

PROGRAM FUNDING

EPA has drafted rules and implementation plans for major changes in their program to improve protection of farmers and their employees from pesticide exposure. However, the desired end point of this program is not likely to be met because funding to support state pesticide lead agencies and extension services, is totally inadequate.

In Ohio, Ohio State University (OSU) Extension receives no dedicated funding to support WPS orientation and train the trainer programs targeted for 30,000 farmers. The ODA must perform many activities to comply with implementation and enforcement planning guidance established by EPA through their coordinated state grants program. The following list of activities is to be performed by the ODA with only one man year of federal funding.

- Prepare WPS Implementation and Enforcement Strategy.
- Conduct public meetings to gather input concerning WPS implementation.
- Develop and distribute outreach materials to regulated individuals and affected workers. (Compliance materials for 30,000 persons are being distributed.)
- Prepare media campaign to inform all impacted persons.
- Attend regional and national training programs offered by EPA.
- Prepare regular reports to EPA on implementation activities.
- Review states laws and regulations to any needed changes.
- Train state staff for implementation of enforcement responsibilities.
- Conduct outreach with health care professionals to identify their role in diagnosis and treatment of pesticide exposures.
- Develop cooperative agreements with other agencies, where needed, to accomplish program objectives.
- Develop state process for declaration of agricultural emergencies as defined by the WPS.
- Respond to complaints filed by workers or their advocates concerning compliance problems.
- Incorporate WPS compliance activities into all agricultural pesticide related inspections.
- Review compliance with WPS label requirements during inspections at pesticide registrants and dealers.

CONCLUSION

My colleague and Chairman of NASDA's Task Force, Texas Commissioner Rick Perry, carefully described the overall concerns the we agricultural officials have with EPA's new revised Worker Protection Standard. His recommendation for a delay in enforcement of this regulation is the only appropriate action for EPA to take.

As Commissioner Perry explained, we are not proposing a complete halt to the program; in fact, we encourage EPA, in coordination with the state lead agencies, to move forward with enhanced education

and training activities, as well as compliance monitoring. A delay in enforcement will allow EPA and the states to address and correct the overreaching, burdensome portions of this program — areas like the notification requirements.

Again Mr. Chairman, thank you for the opportunity to share the concerns and perspective of farmers in the Midwest.



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POSITION STATEMENT

Testimony of
Steven W. Horn, Commissioner
Colorado Department of Agriculture
before the
House Agriculture Subcommittee on
Department Operations and Nutrition
U.S. House of Representatives
November 10, 1993

re: The Worker Protection Standard for Agricultural Pesticides

Good morning Mr. Chairman and members of the subcommittee. Thank you for the opportunity to testify before this Subcommittee on the Environmental Protection Agency's (EPA) new Worker Protection Standard for Agricultural Pesticides (WPS). I am Steve Horn, Commissioner of the Colorado Department of Agriculture. I applaud this committee for investigating the effects this regulation will have on state regulating agencies' ability to enforce the new Standard.

I am joined today by my fellow colleagues as part of the National Association of State Departments of Agriculture (NASDA). NASDA is the nonprofit association of public officials representing the Commissioners, Secretaries and Directors of Agriculture in the fifty states and the territories of American Samoa, Guam, Puerto Rico, and the Virgin Islands. In most cases, under a cooperative agreement with the EPA, the state departments of agriculture serve as the lead state pesticide regulatory agency in each state. Our enforcement staff belong to an affiliate organization called the Association of American Pesticide Control Officials (AAPCO). That organization was consulted in the development of this testimony.

I want to concentrate today on the pesticide label requirements of the WPS. As this Subcommittee is aware, the label is the law. Those labels will provide for the regulatory enforcement ability of the Standard. The implementation of pesticide labels is undoubtedly the key regulatory link between the state and federal programs. The pesticide label statements are the basic enforcement component of assuring protection to persons who handle these materials or may be exposed to their residues on treated surfaces. We support the Environmental Protection Agency's (EPA) diligent efforts to improve pesticide labels and provide increased protection to workers and handlers. However, NASDA has concerns that EPA has, through its ambitious efforts to change labels for increased protection, uniformity in interpretation, and predictable enforcement, established a program that will have contrary effects.

The impact of the label implementation plan has broad implications not only to regulators, but also to those who apply and sell products subject to the label amendments. Under the guidelines provided to pesticide registrants, there are a series of options they may choose to effect the label changes of the

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worker protection standard which must be accomplished by an April 21, 1994 cutoff date. These options were developed by EPA after the National Agricultural Chemicals Association (NACA) proposed that EPA delay label changes until October 1995 — a request similar to what we are proposing as regulating agencies today. These options were created without sufficient consultation with the state departments of agriculture, those who must enforcement the requirements. While we understand the need to provide the options outlined in *PR Notice 93-11* if the April 21, 1994 deadline is retained, the options create a regulatory nightmare which will prohibit adequate enforcement of the Standard.

If a registrant elects to choose what has been called a "self-verification" option, the state lead agencies will have substantial difficulty in determining whether it is in compliance. There is no mechanism or system for the states to know whether the products observed in the field have been self-verified or whether they even meet the WPS labeling requirements. Changes to labels could be directly or inadvertently made outside the scope of the WPS. These types of violative products may take a considerable amount of enforcement resources to determine these eventual problems, all the while possibly increasing the chances of worker exposures which are unacceptable and even consumer exposures to potential illegal residues on food crops.

Also, noncomplying products that are released for shipment before January 1, 1994, may be sold or distributed after the cutoff date under certain conditions. State lead agencies responsible for enforcing the new labels may not be aware of the actual shipping date without dedicating a significant amount of resources to tracking bills of lading, shipping invoices, and inventory receipts. In fact, the shipment could be in another state and access to the information would be limited. Under this option, registrants would be required to make "generic" labels available to retailers and distributors that purchase these noncomplying products. These businesses would make them available to users at the time of purchase. There is no enforcement safety net or mechanism to assure the businesses distribute the generic labels or whether the purchaser keeps it. Enforcement staff would be required to conduct an extreme amount of follow-up work to determine a paperwork trail of compliance. Furthermore, applicators would have no incentive to retain the generic label if it was included with the product and would instead follow the container label, which may have reduced worker protection statements. This, in effect, would not reduce potential exposure to workers and handlers. Without the generic label at the site, regulatory officials will have difficulty in determining whether it was provided.

In addition to the generic label, a registrant may opt for what is called "interim" labeling. This essentially requires a sticker on the container label that refers the user to a product-specific label. The sticker would, for all practical purposes, tell the user to ignore the container statements and comply with the interim label directions. As you can predict, the same type of enforcement problems will occur under this scenario as with the generic labels. To complicate this matter further, a registrant may elect different options for the same product depending upon stock inventories and shipment dates. In essence, a retailer/distributor or user could end up with the same product, but different type of labeling. This certainly complicates the enforceability of the labeling scheme.

There are legitimate concerns that while attempting to determine which label statement to follow, the applicator could inadvertently choose the wrong one and be in violation. This type of labeling circumstance establishes a very arbitrary and confusing decision for the applicator as well as the enforcement staff attempting to determine compliance. Indeed, it is possible that a pesticide applicator could have an old label, a generic label, and a stickered interim label all at one site. Imagine our difficulty in determining compliance with this scenario! Put yourself in this situation as a user and you can see the problem of attempting to decide what label direction to follow.

Under EPA guidelines, registrants may receive preapproved deviations, exclusions, or time extensions from the WPS labeling requirements. Again, regulatory officials will not know if, or when, these modifications were approved by the federal agency. Product status will be questionable at best. Field staff may be reluctant to take enforcement actions due to this type of tenuous situation and users would

be more inclined to stockpile and use old labels that do not provide the intended protection, thus negating our mutual objective of reducing occupational exposure to pesticides.

We are aware of and support the need for EPA to improve the quality of pesticide labeling and provide for the reasonable transition necessary to implement the new standards. We applaud the agency in attempting to accomplish this monumental task under such extreme circumstances and compressed time restrictions. However, these elements have, unfortunately, contributed to an implementation plan that will impede enforcement and compliance determination by state regulatory officials. In addition, because of the various options, users will be bombarded with conflicting or different labels that will contribute to the uncertainty of determining proper and safe use. Furthermore, even with the new labeling amendments, the full effect of the WPS will not be entirely in place until October 23, 1995 when all labels in the channels of trade must comply with the new amendments. During this interim period, there will be a variety of labels in the market that will require discretionary interpretation, and jeopardize consistent enforcement by regulatory officials. The label is the law and is required to be followed. Under the proposed program, there will be fewer followers and many more wanderers due to the uncertainty and diversity of labels that will be purchased.

In summary, we support the concept of uniform label statements and the pursuit to protect persons from exposure to the use of pesticides. However, the EPA regulation will create confusion in the regulated community and establish a patchwork of enforcement problems due to the various labeling options. We recommend that EPA delay the April 1994 cutoff date in favor of a strict label compliance deadline consistent with the October 23, 1995 date. This will give the registrants ample opportunity to submit adequate labels; it will allow old stocks to be purged from the market; and it will give EPA sufficient time to perform an efficient review of labels. This proposal, if adopted, would assure predictable interpretation and enforcement, remove the uncertainty of the status of labels, and effectively implement the worker protection requirements in a feasible manner.

We sincerely appreciate the subcommittee's consideration in this matter.



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Bob Odom, Commissioner
Louisiana Department of Agriculture
before the
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U.S. House of Representatives
November 10, 1993

re: The Worker Protection Standard for Agricultural Pesticides

Mr. Chairman and members of the Subcommittee. Thank you for the opportunity to appear today before the House Agriculture Subcommittee on Department Operations and Nutrition to discuss the Environmental Protection Agency's (EPA) new Worker Protection Standard for Agricultural Pesticides (WPS). I am Bob Odom, Commissioner of the Louisiana Department of Agriculture, and President of the National Association of State Departments of Agriculture (NASDA). NASDA is the nonprofit association of public officials representing the Commissioners, Secretaries and Directors of Agriculture in the fifty states and the territories of American Samoa, Guam, Puerto Rico, and the Virgin Islands. In most cases, under a cooperative agreement with the EPA, the state departments of agriculture serve as the lead state pesticide regulatory agency in each state. The chief state agriculture officials appreciate this Committee's interest in discussing this important issue.

As President of NASDA, I would like to reiterate the position Texas Commissioner Rick Perry shared with the Subcommittee earlier. NASDA strongly recommends that enforcement of the WPS be delayed until October 23, 1995, the date that all labels must be consistent. We believe that in the interim training and educational activities can be enhanced, and we would propose that states conduct enforcement monitoring activities to assist producers in preparing for full implementation of the standard.

The new Worker Protection Standard has generated a lot of controversy within the agricultural community. To date, the lead state pesticide agencies have not been successful in obtaining the necessary information from EPA to assist in the proper implementation of the WPS. As you have heard from my colleagues today, a number of questions remain unanswered, and significant problems exist as the regulation currently exists. I would encourage this committee to strongly suggest that EPA cooperate with the state regulatory agencies and the agricultural community in addressing these serious concerns.

PERSONAL PROTECTIVE EQUIPMENT

Among the several new provisions covered by the WPS that will have a major impact on the agricultural community is the requirement to wear extreme personal protective equipment (PPE). While there are several problems with the PPE regulations, the central flaw in the regulations is that there are no distinctions made in clothing required for climate conditions in various parts of the country. For example, what might be acceptable clothing for pesticide handlers in the dry, High Plains of Montana in mid-summer where temperatures are cooler and humidity is very low would be deadly in Louisiana where daily temperatures during the summer are in excess of 95 degrees and the relative humidity is in excess of 90 percent every day.

The combination of temperature and humidity in many southern states during summer months makes these PPE requirements completely unworkable. It also makes me wonder who dreamed up these regulations, what part of the country they are from, and what scientific criteria for human survivability was figured into the type of equipment required.

The requirements for an individual who is mixing and loading pesticides for application would not experience a great impact because of the short period of time required to mix and load. However, the requirement that the applicator wear chemical-resistant PPE during the actual application does present a problem. I can understand the need for such a stringent requirement for the mixer/loader who may come in contact with the pesticide concentrate, but the applicator would only have the potential to come in contact with the diluted material. Therefore, they should not need the degree of protection afforded the mixer/loader. The PPE requirement for the applicator should be scaled down to a more realistic level of long sleeve shirt, long pants and socks and shoes. This same argument can also be used in the case of a crop advisor needing to scout a treated field before the restricted entry interval (REI) has expired. With the adoption of more and more integrated pest management (IPM) practices, it is imperative that the crop advisor enter the treated area to monitor the level of efficacy of the pesticide. It should also be noted that crop advisors have to be certified in each state and these people are very knowledgeable in the potential hazards of pesticide exposure. As Arizona Director Kelly noted in his testimony, "it is unreasonable to require a ... licensed pest control advisor (PCA) to carry all potential PPE that may be required by any label plus a decontamination facility to every field they might visit in any given day. Not only is the level of equipment inappropriate but it will severely limit the PCAs ability to perform his services. It is common practice for a PCA to visit in excess of 50 fields per day in a geographic area that could be as large as 250 square miles or more." Director Kelly also noted that "the Standard will encourage agricultural producers to move away from integrated pest management (IPM) practices due to these unworkable WPS regulations at a time when efforts are being made to increase IPM practices."

The unrealistic requirements of wearing the chemical resistant suits during the summer months will create frequent heat stress conditions. As a result, the fear of heat stress will generate a low level of voluntary compliance.

There is also a lot of concern among agricultural producers as to their liability exposure when dealing with the problem of heat stress. The standard simply states that the employer take any necessary steps to prevent heat illness while PPE is being worn. What are the necessary steps? There are many factors that have to be taken into account, such as weather, work-load, protective gear to be worn, and the physical condition of the worker. If the employer misjudges one of these subjective factors and this results in employee heat stress, the employer could then be faced with the burden of liability. High air temperature and humidities put agricultural workers at special risk of heat illness. Workers' Compensation claims for heat illness among agricultural workers are among the highest of any occupation. With the additional requirements of the WPS, these claims will surely significantly increase in number.

FEDERAL FUNDING OF THE WPS

There are several areas of concern among the state regulatory officials that are charged with implementation of the WPS program. One of the biggest concerns is money. This program on its own will require as much training and compliance monitoring as the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Without proper funding, the state lead agencies will not be able to provide the necessary training or the necessary compliance inspections in order to make the program work. This will lead to a tremendous amount of confusion and frustration that will result in apathy and non-compliance and ultimately the failure of the program.

As Ohio Director Dailey said in his testimony, while "EPA has drafted rules and implementation plans for major changes in the program to improve protection of farmers and their employees from pesticide exposure, the desired end point of this program is not likely to be met because funding to support state pesticide lead agencies and extension services, is totally inadequate."

TRAINING AND EDUCATION

Another area of concern is the deadline established by the rule. In Louisiana we anticipate that approximately 10,000 people will have to be trained by April 15, 1994. Yet at the present time, most of the training material that was to be provided to the states by EPA has not yet been received. And the state lead agencies and university extension services, charged with the education and compliance assistance components of the implementation process, are receiving from federal agencies only a small portion of the funding needed to adequately prepare the training materials and to disseminate the information to farmers, workers and handlers on a timely basis. The states have been told that the material will be provided in the near future, but even if all the material were received by the end of 1993, it would be impossible to have everyone trained by April 15, 1994. There is a definite need for extending the April 15, 1994 date, as recommended by Texas Commissioner Rick Perry, to allow for successful implementation of the training programs.

ENFORCEMENT

One other area of concern for the states is the difficulty of enforcement of the Standard. An example of this would be the requirement that at least once every two hours someone must check on — by sight or by voice communication — any handler who is handling a pesticide that has a skull and crossbones symbol on its label. Other than being on site when the application takes place, field regulatory inspectors have no sure way of knowing if this part of the rule is being complied with.

CONCLUSION

It is important for the Subcommittee to remember the economic impact the WPS will have on an already depressed agricultural economy. Cost of implementation to the farmer will include:

- purchasing PPE, decontamination supplies, eye wash, etc.;
- additional time for training of workers and handlers;
- purchasing material for centrally located information on pesticide applications;
- posting signs and the time related to removing and relocating them;
- additional communication time with commercial applicators hired to apply pesticides;
- maintenance and cleaning of PPE; and

- additional training and educational material related to implementation of the rule.

These additional costs will result in several billion dollars being added to the cost of producing food and fiber, costs which will either reduce the slim profit margin farmers receive or be passed on to the consumer in the form of higher food and fiber prices.

While NASDA strongly supports balanced efforts to protect workers from unreasonable pesticide exposure, the chief state agricultural officials have severe reservations about the new federal WPS program. It is absolutely essential that EPA delay the enforcement of the regulation until October 23, 1995, the date when all pesticide labels must be consistent. As Commissioner Perry explained, we believe that in the interim training and educational activities can be enhanced, and we would propose that states conduct enforcement monitoring activities to assist producers in preparing for full implementation of the standard.

Mr. Chairman on behalf of myself, my five colleagues from Arizona, California, Colorado, Ohio, and Texas, and the remaining state agricultural officials, allow me to express our sincere thanks for this Committee's interest in reviewing the WPS program. Your continued efforts to balance the need to protect workers and the environment with farmers' ability to produce profitably is appreciated by the agricultural community. Any of us will be happy to answer questions the Subcommittee may have.

**Testimony before the House Agriculture
Subcommittee on Department Operations and Nutrition**

EPA's Worker Protection Standards for Agricultural Pesticides

Presented by

L. Diane Mull
Executive Director
Association of Farmworker Opportunity Programs

November 10, 1993

I want to thank you for this opportunity to testify about EPA's implementation of the Worker Protection Standards. The Association represents a national network of community-based, non-profit organizations and state agencies. Our meml. operate employment, training, and support service programs for farmworkers through 525 field offices located in 49 states and Puerto Rico. We at AFOP have been involved with helping EPA implement the Worker Protection Standards since before their release in 1992. My personal background includes more than seventeen years of experience with farmworker programs, twelve of which have been in my current position as executive director of a national association of farmworker organizations.

The Association appreciates this effort by Congress to provide oversight to ensure that the worker protection standards are appropriately implemented. Despite some weaknesses, EPA's worker protection standards regulations represent a step forward toward improving workplace safety for agricultural workers, who face some of the most hazardous working conditions in this country. We are encouraged by EPA's announcement to strengthen existing statutory authority governing pesticides,

upgrading the scientific data related to pesticides and food safety, and reorient efforts to focus on preventing problems at the source through appropriate reduction of pesticide use. A fully implemented and enforced standard will help our Association's members fulfill their requirements to provide employability enhancements for agricultural workers who choose to remain in agricultural employment, and to ensure that those who would like to be trained for other occupations will be healthy enough to obtain more stable, year-round employment.

I want to commend EPA, particularly the Office of Pesticide Programs, for their efforts to bring together a diverse group of individuals from all concerned disciplines to reach consensus on a methodology for implementing the standards and setting a firm schedule of doing so within the required time frames. This EPA forum has fostered collaborative efforts between our Committee for Farmworker Programs (CFP) and the National Council of Agricultural Employers (NCAE) to jointly educate congressional staff on the need for funding to support the organizations assisting with implementing the standards and attempting to educate both farmworkers and farmers. The Association recognizes that the primary focus of funding and training must be to train farmworkers, but that farmers also need to be informed and understand their responsibility under the law.

Through cooperative agreements, EPA has established partnerships with organizations serving farmworkers to ensure that the materials and training curricula being developed are culturally sensitive and appropriate for the targeted population. For example, AFOP was involved in the development of the national WPS poster. We field-tested the sketches and language in the poster directly with farmworkers to gauge their understanding and comprehension of the message. As a result, several changes were made and the final product was significantly improved. Likewise, EPA utilized

the Association to field test with farmworkers the 150-page WPS Handbook for Agricultural Workers. Again, EPA was receptive to the numerous recommendations for changes to improve the document. This collaboration has resulted in two nationally distributed documents that will help employers to meet the requirements of the standards and help agricultural workers to better understand how to protect themselves and their families from pesticide exposure.

However, in reviewing the worker protection standards, we note a number of strengths and weaknesses in the level of coverage for agricultural workers and the approach to determine who is a certified trainer and who issues cards to workers. We strongly encourage EPA to continue efforts to strengthen the standards and to avoid exempting any sector of agricultural industry from compliance. We realize that EPA has determined to use states to handle the major implementation of the program. However, we are very concerned that without a directive from the head of EPA, some states may choose to not include farmworker community-based organizations to assist with the delivery of training and issuing of cards to agricultural workers.

Our field staff, some of whom are former farmworkers, work on a day-to-day basis with agricultural workers. There is a close relationship between the workers and our members' staff, including communication about the realities of what occurs or does not occur at the workplace. Based on this knowledge, we are strongly concerned that partnerships that include farmworker organizations may not be established to allow our members to provide the needed education and training to agricultural workers.

As EPA continues to review its efforts for implementing the standards, we would suggest consideration of the following improvements that will help further

ensure the safety of the workforce and improve the dissemination of information to agricultural workers:

1. Require that the reentry intervals for pesticides are long enough to ensure the safety of all workers in the workforce, especially children. Considering the growing evidence linking agricultural chemicals to even common cancers, such as breast cancer, and the lack of testing to determine the effects of pesticide exposures on children, having reentry times that are gauged more on the safety level of the higher risk worker would be prudent than on the average worker. As many children and teenagers work in agriculture and are directly exposed to pesticide residue on the commodities with which they work, tolerance settings based on consumption by the general public alone is inadequate. Likewise, small children often play in the fields where pesticides are sprayed or in the areas where pesticides are mixed or loaded. Restrictions that realistically address the hazards for the whole farmworker family are important and must be addressed. We would encourage that funding be provided that specifically studies the exposure risks of the women and children in agricultural worker families.

2. Regarding administration of training programs within states, require states to establish partnerships with interested farmworker organizations within their area to provide pesticide worker safety training to farmworkers so that the farmworker organization staff can be certified as trainers and can issue cards to workers they have trained. Also prohibit states from setting excessive requirements on farmworker organization staff in order for them to be certified as trainers to issue cards.

For example, a current employee of a farmworker organization or migrant health clinic need not be a certified pesticide applicator in order to provide pesticide

safety training to agricultural workers who will not be applying or handling pesticides. Limiting the number of individuals who will be available to help carry out this massive task of training workers is clearly self-defeating. A national appeals and resolution mechanism needs to be established so that farmworker organizations that are excluded from participation by a state to issue cards to workers has the right for review and mediation if there is a legitimate claim.

3. In order to address the heat stress problems caused by agriculture's required use of protective clothing in hot, humid locations, we suggest that employers be trained on the basic practices that can help prevent these problems. Essentially, EPA should mandate that employers provide an accessible and abundant supply of cool (potable) drinking water and offer frequent, short-term breaks for the workers when the temperature and humidity are above certain established levels. The worker protection standards fall short in this area, since they only require employers to provide water that is not dangerous to swallow in emergency situations, rather than potable water. Water is needed for both drinking and washing of hands.

4. To increase protection for agricultural workers, we recommend that EPA lessen the number of days before an employer is required to provide training as 16 days is too long a period of time. Too many workers will be missed during this first phase of the standards implementation as their employment on some farms may be shorter although their stay in an area is considerably longer. Worker retraining must occur more frequently than every five years, considering that there have been no safety standards in agriculture and given the characteristics of the farmworker population.

5. To initially train a workforce that is completely unaware of or misinformed about safety practices will require more than a casual briefing or

discussion. We recommend that EPA mandate that the initial training provided must be at least one hour in length. A 15 to 20 minute briefing may be sufficient for refreshing the memories of agricultural workers who have already been trained. Especially if farmworkers are only being trained once every five years—a period that we believe is too long—the training that they receive must be substantial enough to be beneficial. We also recommend that EPA clearly stipulate that merely showing a video to workers will not meet the WPS training requirements even if the video is in a worker's primary language. Based on our knowledge of the population, interactive training must be required.

6. We do not support the exemption of any sector of agricultural industry, such as the cut flower and fern sector, from compliance with any provision under the worker protection standards. We recommend that EPA reconsider the precedent that has been established and reverse its decision.

7. The requirement for employers to provide personal protective equipment for early entry workers is a positive step by EPA. However, for other workers who will need to have clean work clothes on a daily basis, the standards make no provision. Even though a worker may be aware that fresh clothes are needed, they may likely not be able to afford such costs. Therefore, we recommend that EPA require that employers provide either a clean change of clothing for agricultural workers or facilities to adequately wash and dry clothing for use each day.

8. We encourage both EPA and Congress to provide full and adequate funding for carrying out the responsibilities under these provisions. EPA has done a commendable job with the limited resources at their discretion. However, EPA, the

states, and farmworker organizations working to provide training to agricultural workers are in dire need of resources to carry out the assigned tasks.

9. We believe that the establishment of a national advisory committee who will provide oversight in this area would be a helpful. Equal representation from all affected and interested agricultural industry, farmworker, and other key sectors is wise. We are interested in working with EPA in recommending a person from our organization to participate.

The increased protections and modifications of the proposed methodology to implement training with farmworkers that we have recommended, would go a long way toward helping to ensure that agricultural workers would be adequately protected and facilitate the greatest level of information made available to agricultural workers in a language and manner that is understandable to them.

Prevention through education can help ensure the safety of the agricultural workforce and help the agricultural industry move away from the dubious distinction of being one of the most dangerous industries in the United States. There is a direct cost benefit from implementing strong worker protection standards that far outweighs the initial funding investment to cover implementation and training of the workforce.

For farmworkers, strong standards mean that they can work without fear of injury, illness, or another emergency that would hurt themselves or their family, and prevent them from earning a living. The workers become empowered to be able to protect themselves from known dangers. They can live healthier, productive lives, and be able to sustain their employment either within or outside of agriculture in the future. For agricultural employers, strong standards mean that their workers compensation

rate can be lowered. This lowering of the rate directly results in savings and reduced liability. The employer also has a healthier workforce, which will be ready to complete their assigned tasks and bring in a harvest in a timely manner. For the general public, strong standards mean reduced costs to the taxpayer for coverage not otherwise provided by the employer for medical and other emergency costs associated with pesticide-related illness or injury.

We stand ready to provide workers with the knowledge of how to protect themselves and their families from unnecessary risks and harmful exposures that can have deadly and long-term ramifications. AFOP's members deal with the employment and training needs of agricultural workers every day. Farmworkers look to our members for any occupationally related training need. When a worker can no longer withstand the rigors of field work yet wants to remain employed and provide for their family, our programs are responsible for providing eligible workers with assistance.

Without strong worker protection standards that are uniformly applied and enforced throughout all of agricultural industry, we will continue to be faced with disabilities and employment barriers that are created from years of working in a dangerous, unhealthy, and inadequately protected work environment.

Thank you again for this opportunity to comment. I'll be glad to answer any questions or provide additional information as needed.

(Attachment follows:)

Association of Farmworker Opportunity Programs



...taking the strongest step forward into a new day.

**Biennial Report
July 1, 1991 — June 30, 1993**

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The Association of Farmworker

Opportunity Programs (AFOP)

was established to provide a forum through which all organizations funded to serve migrant and seasonal farmworkers can work together more effectively.

Founded in 1971, AFOP is a national federation of non-profit organizations and state agencies that provide training and other supportive services to migrant and seasonal farmworkers.

MESSAGE FROM THE EXECUTIVE DIRECTOR AND PRESIDENT OF THE BOARD



AFOP was established 22 years ago to provide a national forum through which all organizations and agencies that operate employment, training, and supportive service programs for farmworkers could work together more effectively. During those early years, AFOP grew in experience, capability, and national visibility. Based for the last twelve years in the Washington, DC area, the association has become a trusted resource to lawmakers and federal agency personnel on how legislative and regulatory actions would impact farmworkers.

Through the years, AFOP has grown in new directions. Although the association continues to follow its original mission, AFOP provides more services to its members and for farmworkers. With an expanded agenda, the association has made great progress in many important areas, such as increasing farmworker labor standard protections, coordinating with other human service organizations, and educating the public about farmworkers and the noble work of our members. In addition to these activities and its core JTPA technical assistance services, AFOP has taken on two new projects — a nutrition and health project and a pesticide safety project — geared to improving farmworker health through nutrition education and worker safety training.

So as new challenges arise for our members and farmworkers, we at AFOP continue to set our sights on new horizons. As long as farmworkers remain impoverished, underprotected by U.S. law, and isolated from the resources they need to move forward to a better life, AFOP and its members will be working for change. Through a constant process of reassessing the needs of farmworkers and our members, AFOP will take the strongest step forward into a new day.

Diane Mull
Executive Director

Chris Paige
President

(The complete report is held in the committee files.)

TESTIMONY OF MR. BALDEMAR VELASQUEZ
NOVEMBER 10, 1993
SUBCOMMITTEE ON DEPARTMENT OPERATIONS AND NUTRITION
HOUSE AGRICULTURE COMMITTEE

Thank you for the opportunity to make these comments. My name is Baldemar Velasquez, President of the Farm Labor Organizing Committee. We represent close to 5,000 farmworkers on 120 family farms contracted to grow crops for Campbell Soup, Heinz USA, Vlasic Pickle, Green Bay Foods, and Aunt Jane Pickle Company in Ohio and Michigan. I am not here as an opponent of the cultivating sciences in agriculture as I am fully aware that increases in productivity are essential to job security and increased earnings.

No worker, however, especially farmworkers--where entire families work--wants to place his family in jeopardy. It is first our greatest desire to remove the most toxic chemicals like phosdrin, maneb, methyl bromide and others. Short of having that desire granted, management and handling of these compounds become a very serious issue with us.

The three serious poisonings that our members have directly experienced with maneb, phosdrin, and methyl bromide could have been avoided by properly enforced entry and reentry standards. After an aerial spray poisoning of workers in an adjacent field, we negotiated a clause in our union contract with that grower's company that required their growers to notify workers in adjacent fields whether those workers are employed by him or not. These notification standards have not impacted the industry; neither has

protective gear such as gloves, masks, and goggles on our tomato harvesters.

In order to deal with management issues such as training of workers, we have initiated an ambitious effort through our industry roundtable which will be addressing these and other productivity and management issues. In order for any training to be truly effective, there first has to be a change of attitudes from adversarial to cooperation, from greed to understanding that we are not only raising crops but also raising families--men and women, growers and farmworkers alike--to make the contribution to society that God intended for us.

This committee should consider ways in which the relationship between workers and growers could change so that there would be developed the as yet non-existent science of employer-employee relations. Lacking this, training would be difficult to make any difference in the cultural and work practices.

Also, in our case, the union has taken the initiative to train our members on pesticide safety, but the only place where there is meaningful implementation is where we have union contracts. Lacking this arrangement throughout most of the country, I see no other option but to implement and strengthen the worker protection standards.

When God spoke in Genesis for man to have dominion over the earth, the only land I can conceive of ruling over is that land that is in my front yard. Perhaps that would be a

good measure to not put things on it that could possibly endanger it, the children, the pets and the visitors that walk upon it.

FARMWORKER JUSTICE FUND, INC.

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**TESTIMONY OF THE FARMWORKER JUSTICE FUND
CONCERNING EPA'S WORKER PROTECTION STANDARD**

By Shelley Davis

The Farmworker Justice Fund, Inc. ("FJF") is a non-profit, national farmworker advocacy organization which provides free legal assistance to migrant and seasonal agricultural workers throughout the nation. I am an attorney for FJF and I appear today with Valerie Wilk, who is FJF's Health Specialist. FJF submits this testimony on behalf of itself and its many farmworker clients.

In 1992, FJF founded the Farmworker Health and Safety Institute (the "Institute") with funding from the W.K. Kellogg Foundation and the Nathan Cummings Foundation. The Institute is a consortium of grassroots farmworker organizations, including the Comité de Apoyo a los Trabajadores Agrícolas, the Farmworker Association of Florida, the George Washington University Medical Center's Division of Occupational and Environmental Medicine, and four Migrant Health Centers serving farmworkers in New Jersey, Puerto Rico and Florida. The Institute has developed "train-the-trainer" programs for farmworkers and their health care providers explaining workplace health and safety hazards, focusing especially on pesticides. The Institute is also conducting these trainings throughout the nation. The recent EPA worker protection

regulations are an integral part of these pesticide training sessions, but trainers also focus on the specific pesticide hazards which the workers face in their own workplaces.

In our testimony today we address the following issues: 1) the pesticide hazards facing farmworkers; 2) the actions which must be taken to protect the health and safety of farmworkers; and 3) the economic impact of providing these protections.

I. THE CURRENT PROVISIONS HAVE PROVED INADEQUATE TO PROTECT THE HEALTH AND SAFETY OF FARMWORKERS

The Occupational Safety and Health Act guarantees to every working man and woman in the Nation "so far as possible . . . safe and healthful working conditions"¹ By contrast, the Federal Insecticide Fungicide and Rodenticide Act ("FIFRA") only protects American farmworkers, who are primarily people of color from "unreasonable adverse effects." These effects are determined by a cost-benefit analysis which, by statute, takes into account the extent to which the loss of a pesticide or a restriction on its use would impact on the "[1] production and prices of agricultural commodities, [2] retail food prices and [3] otherwise on the agricultural economy. . . ."² Consequently, FIFRA does not prioritize the health and safety of agricultural workers who are directly and indirectly exposed to pesticides on a daily basis. As a matter of fairness and environmental justice, this double standard must be abolished. Farmworkers must be guaranteed the

¹ 29 U.S.C. § 651(a).

² 7 U.S.C. § 136d(b).

same right to a safe workplace as is promised to every other American worker.

The need for more effective regulation is great. Each year an estimated 300,000 farmworkers are injured due to occupational exposure to pesticides.³ The U.S. Bureau of Labor Statistics reports that agriculture is the second most dangerous occupation in the nation and that agricultural workers suffer the highest rate of chemical-related illness of any occupational group: 5.5 per 1,000 workers.⁴ State workers compensation statistics tell the same story. In Washington State, for example, in the period 1987-1990, farmworkers had a rate of systemic poisoning that was 3.2 times higher than that of all workers and a rate of toxic disease which

³ United States General Accounting Office, Hired Farmworkers Health and Well-Being at Risk at 13 (GAO/HRD-92-46) (February 1992) ("Hired Farmworkers"); U.S. Congress, Office of Technology Assessment, Neurotoxicity: Identifying and Controlling Poisons of the Nervous System, OTA-BA-436 (1990) at 283 ("Neurotoxicity"); R. Wasserstrom and R. Wiles, Field Duty: U.S. Farmworkers and Pesticide Safety at 3 (1985) (300,000 farm workers become ill each year due to occupational exposure to pesticides); see 52 Fed. Reg. 16,050, 16065 (1987) (OSHA estimates that between 80,000-300,000 farmworkers are injured each year due to pesticides.) The number of farmworker injuries is not more precisely known in large measure because the EPA has not been funded to systematically collect this data. In addition, of the 8 states which specifically require reporting of pesticide poisoning incidents only California has made an effort to effectively collect this information. While Washington State has recently initiated a similar program, other big agricultural states, like Florida and Texas, have allowed their reporting requirement to become a dead letter. Thus, the Bush Administration USDA's criticism, that the WPS cannot be justified on cost-benefit grounds, is a case of the culprit blaming the victim.

⁴ 52 Fed. Reg. 16,050, 16,059 (1987).

was 2.2 times the rate of all workers.⁵ And these figures are only the tip of the iceberg because occupational disease among farmworkers is grossly under reported.⁶

Pesticide poisoning of field workers usually occurs through direct spray,⁷ drift⁸ or exposure to pesticide residues on crops. Pesticide mixers, loaders and applicators are also injured by spills or splashes. Such exposures can cause acute, subchronic or chronic illnesses. Acute pesticide poisoning may cause skin rashes, eye injuries, fever, vomiting, or even death. Chronic or subchronic exposure may lead to birth defects, sterility, neurological damage, kidney or liver illness or cancer.⁹

The full extent of the chronic effects caused by virtually all available pesticides remains unknown.¹⁰ Nonetheless, at least 50

⁵ Department of Labor and Industries, Farm Worker Health & Safety in Washington State: A Look at Workers' Compensation Data Olympia, WA. at 11 (1991).

⁶ Id. at 9-10

⁷ See e.g., Chacon v. Heinz Corp., C.A. No. 84-4017 (C.D. Ill. 1986) (seven farmworkers harvesting tomatoes were injured when a cropduster, spraying an adjacent field, accidentally hit them with direct pesticide spray.)

⁸ An estimated 85-90% of pesticides applied by aerial application do not hit the target and are dispersed through the air, soil and water through drift. G. Matthews, Pesticide Application Methods (1982). Pesticides applied aerially or by ground rig sprayers can drift up to a mile or more from the site of application, even under normal wind conditions. Id.

⁹ See e.g., V. Wilk, The Occupational Health of Migrant and Seasonal Farmworkers in the United States at 60, 67-68 (1986).

¹⁰ The EPA has been reregistering pesticides for nearly 2 decades, but only a fraction of active ingredients have been fully evaluated for chronic effects.

active ingredients are known or suspected carcinogens and 20 are known or suspected teratogens.¹¹ Indeed, numerous epidemiological studies have begun to document the link between pesticide exposure and cancer.¹²

Some pesticide exposure incidents end in tragedy. For example, in 1983, a farmworker was drenched with the pesticide dinoseb and died within 24 hours.¹³ In a California incident a pregnant farmworker, sprayed with pesticides during her first trimester of pregnancy, gave birth to a child who has no arms or legs.¹⁴ Many of these incidents could be prevented by eliminating the most dangerous products from the market and requiring safe work practices.

II BOTH GROWERS AND WORKERS WILL BENEFIT FROM MANDATING INCREASED PESTICIDE SAFETY

Since the 1970's, farmworkers have petitioned the EPA to mandate safe work practices for pesticides. The new regulations, which replace clearly "inadequate" standards, are a modest step forward. For the first time they provide farmworkers and uncertified applicators with some basic safety training; require the posting of a chemical list, lengthen reentry intervals, require decontamination water, make available emergency assistance, etc.

¹¹ See V. Wilk, The Occupational Health of Migrant and Seasonal Farmworkers in the United States at 67-68 (1986).

¹² See M. Moses, Cancer in Humans and Potential Occupational and Environmental Exposure to Pesticides: Selected Abstract (1988).

¹³ See 51 Fed. Reg. 36,634, 36,637 (1986)

¹⁴ Aguirre v. Stauffer, #184159 (Kern Cty. Super. Ct.).

These protections will save lives and reduce the number of worker injuries. This is a win-win situation: workers benefit by avoiding injuries; growers will benefit because fewer accidents will mean fewer lost workdays, lower workers compensation costs and the prevention of damage to the land and water.

These regulations have already been too long in coming. All other workers have been covered by OSHA's Hazard Communication Standard since 1987. As of now, farmworkers have already waited six additional years for less effective) protections. Moreover, even though all provisions become effective on April 15, 1994 for growers using newly labeled products, many workers will not be fully covered until October, 1995 when all products finally will have to have the WPS label. These delays are intolerable, where as here, the health and safety of millions of American workers and their children are at stake.

Many poisoning incidents are preventable; and with effective first aid and immediate treatment many injuries can be avoided or lessened. If these regulations had been in place previously many accidents could have been avoided and many devastating injuries eliminated. Let me give you a few examples:

* This past summer, 27 Washington State workers were poisoned by phosdrin in separate incidents. In one such instance a worker was hospitalized for four days after mixing and loading phosdrin because the respirator he was using had not been properly cleaned. In addition, the worker was never trained in the proper use of personal protective equipment ("PPE") and no effort was made to

transport him to the hospital after he had been injured. Under the new WPS, an employer must ensure that all handlers are trained to use PPE, that all PPE is properly maintained and that any worker injured on the farm is taken to a medical facility.

* On November 15, 1989, two crews of farmworkers were directed to tie cauliflower in a Balm, Florida field, a scant twelve hours after the field had been sprayed with phosdrin (chemical name: mevinphos). Two hours after work began, workers started vomiting and fainting. In the course of the day, 85 workers were poisoned by the pesticide residues on the plants and taken to area hospitals and clinics.

Phosdrin, in mode of action and level of toxicity, is like nerve gas. According to its label, workers should not work in a field sprayed with phosdrin until 48 hours after application. The label also provides that workers who do return during the 48 hour reentry interval must be given protective clothing which includes a respirator (if the chemical is still wet), a chemical resistant suit, gloves, etc. These items were not provided to the Balm workers. At least a half dozen legal requirements were violated in this incident.

Most importantly, however, these workers were not in a position to protect themselves: they had never received any pesticide safety training; the field was not posted with a danger sign; there was no chemical list posted informing them of the reentry interval; and there was no decontamination water available to permit immediate washing. These protections might have

prevented this accident.

Phosdrin is suspected of causing miscarriages and birth defects in addition to being a neurotoxin. In the aftermath of this incident, two women had miscarriages and another gave birth to a child with six digits and a tumor on his face. Scores of other workers suffered numbness in the limbs (called peripheral neuropathy). For some, this ailment was so severe that farmworkers who were used to carrying 100-pound sacks of fruit on their back were unable to pick up a newspaper. These injuries could have been prevented if the EPA Worker Protection Standard had been in effect.

* In a 1987 incident, a Michigan farm hand was sprayed with lortsban (chemical name: chlorpyrifos), which had drifted onto him while the grower was applying the pesticide to an adjacent field. He went to his physician the next day, complaining of fatigue; and while on the examining table, his heart stopped beating. He was revived and rushed to the hospital where he was placed in intensive care for four days. After an extensive battery of tests -- which ruled out a cardiac cause -- his doctor suspected a chemical exposure. It was not until after the worker's release from the hospital, however, that his employer informed him that he had been sprayed with the pesticide lortsban which has a 24-hour reentry interval (or quarantine period). This worker now has permanent neurological damage, including loss of memory, inability to concentrate, headaches, blurred vision, behavioral changes, etc.¹⁵

¹⁵ Mitschelen v. Weldun (worker received \$60,000 settlement for his work-related injuries). Nor are his problems unique. Studies have shown that organophosphate poisoning can have lasting

After he filed a workers compensation claim, he was also fired from this job. (He had been a year-round farm hand on the property for three years).

This worker was not in a position to protect himself. He had never been trained in pesticide safety, he had not been warned of the nearby application and there was no posted chemical list, stating the name of the pesticide and the appropriate reentry interval. Had these protections been in place, this worker might have been able to prevent this accident and spared himself these lifelong injuries.

* In a 1986 incident, a Texas worker, mixing cyromazine, was splashed in the eye. At the time, the worker had not been trained in pesticide safety, no eye flush water was available, and no first aid was administered to him on the farm. Even though he received medical treatment later that day, the worker lost his eye. The eye could have been saved, if the worker had known to use eye flushing water immediately.

* In a 1985 incident, a Texas worker applying paraquat, who got off his tractor to fix the rig, was drenched on the leg by the pesticide and the liquid chemical filled his boot. Since the worker had received no pesticide safety training, he did not appreciate the danger he was in and continued to work for the rest

neurological or neurobehaviorial impacts. See M. D. Whorton and D. L. Obrinsky, "Persistence of Symptoms After Mild to Moderate Acute Organophosphate Poisoning Among 19 Farm Field Workers," Journal of Toxicology and Environmental Health, 11: 347-354 (1983); J. E. Midtling, et al, "Clinical Management of Field Worker Organophosphate Poisoning," Western Journal of Medicine, 142:514-518 (1985).

of the day. When he saw his doctor the next day, the pesticide poisoning had complicated his diabetic condition and necessitated the amputation of his leg.

III. PROTECTIONS FOR FARMWORKERS MUST BE STRENGTHENED

Farmworkers deserve the same degree of protection from injury by toxic chemicals as OSHA assures to all other workers. Even when the new WPS is fully implemented, this will not be the case. Let me give you a few examples:

OSHA regulations have embraced the fundamental principle of industrial hygiene that less hazardous substances should be substituted for more hazardous ones and engineering controls should be used to the extent feasible, rather than permitting workers to be exposed to chemical contamination while using personal protective equipment.¹⁶ The EPA has no such philosophy.

Eliminating The Most Hazardous Substances From The Workplace: The EPA has identified the 28 pesticides which "pose the highest potential acute risk to agricultural workers," including five which merit "immediate" action.¹⁷ Most of these pesticides like phosdrin (chemical name: mevinphos), guthion (chemical name: azinophos-methyl) and temik (chemical name: aldicarb) are Toxicity Category I pesticides. As such, they are as acutely toxic as the nerve gas which the Iraqis possessed in the Gulf War. Yet the EPA has taken no decisive action to remove these chemicals from the marketplace. Speaking of phosdrin, for example, researchers at the California

¹⁶ See 29 C.F.R. § 1910.134.

¹⁷ See EPA Press Advisory April 16, 1993 at 1.

Department of Food and Agriculture have concluded that: "the high dermal toxicity [of mevinphos/phosdrin], the use of highly concentrated solutions, and the high volatility at normal field temperature make the provision of a safe workplace almost impossible while using this product."¹⁸

Indeed, with Toxicity Category I pesticides, the margin for error is minimal and accidents occur even when all required safety precautions are taken. Consequently, we urge Congress to direct the EPA to remove from the market the most highly toxic pesticides and those which cause cancer and birth defects as soon as adequate substitute technologies (chemical or non-chemical) are available. Otherwise, these products should be phased out over a short period of time to allow for the development of substitute crop protection methods.

Requiring Engineering Controls: In addition, the federal Worker Protection Standard does not require available engineering controls to prevent exposure to highly toxic chemicals being used. By contrast, since 1977 California has required closed mixing and loading systems for Toxicity Category I pesticides. This change in practice led to a significant reduction in poisonings. While there were 75 serious injuries per year from mixing and loading of Toxicity Category 1 pesticides in the 10-year period preceding 1977, requiring closed systems led to an 80% decrease in injuries

¹⁸ S. A. Peoples et al, Human Health Problems Associated with Mevinphos (Phosdrin) in California for the Years 1975 through 1977, Sacramento, CA (1978) at 23.

from this activity.¹⁹ Farmworkers nationally should be accorded this same protection.

Right-to-Know Protection: Since 1987, virtually all occupational groups in the United States -- except agricultural workers -- have been covered by the Hazard Communication Standard ("HCS") which guarantees workers the right to know the names of the chemicals in their workplace; the right to training concerning those specific chemicals; and 3) the right of access to a Material Safety Data Sheet for each such chemical, stating, inter alia, the signs and symptoms of poisoning from exposure to the chemical, the health risks associated with such exposures and the appropriate treatment in case of accidental injury. Even when the WPS is fully implemented, farmworkers will not have comparable protections.

Under the HCS, employers must disclose the names of all toxic chemicals in the workplace. Under EPA's WPS, a grower need only keep a list of the pesticides applied (or subject to a reentry interval) in the last 30 days in the particular field in which the worker is engaged. This is wholly inadequate since the EPA recognizes that pesticide residues can cause (and have caused) injury more than 30 days after application or expiration of a reentry interval.²⁰ In addition, the WPS list would not inform workers of pesticides which may injure them by drift, when they are

¹⁹ See Rutz, R., "Closed System Acceptance and Use in California," CDFA, Worker Health and Safety Branch Report No. HS-1393 (August 14, 1987).

²⁰ 57 Fed. Reg. 38102, 38123 (1992).

applied in an adjacent field.²¹

The HCS also requires worker training with respect to the particular chemicals in the workplace before the worker begins his or her initial assignment. By contrast, under EPA's WPS, a worker will only receive general pesticide safety training and no information concerning safety practices with the specific pesticides used on that farm. In addition, the WPS-required training need only take place after a worker has worked for 16 days in a field which has been treated with pesticides (or been subject to a reentry interval) within the last 30 days. In other words, under the EPA's scheme first a worker is exposed and possibly poisoned, then he is trained. This makes no sense!

In addition, the HCS requires employers to give workers access to a Material Safety Data Sheet ("MSDS") covering each chemical in the workplace. There is no EPA provision for access to this type information. The pesticide labels, which are not available to the vast majority of the workers do not have comparable information, e.g., they lack information concerning the short and long term health effects caused by exposure.

Whistleblower Protection: In other respects, as well, the EPA's protections fall short of what OSHA provides. For example, while the WPS prohibits an employer from retaliating against a

²¹ For example, on August 15, 1991, 70 California farmworkers were injured by drift from a helicopter applying the pesticide phosdrin (chemical name: mevinphos) to a broccoli field 1/4 mile away. The workers' suffered nausea, vomiting, headache, dizziness, blurred vision and weakness.

farmworker for obeying EPA regulations, it has no mechanism for enforcing this provision. By contrast, under the Occupational Safety and Health Act, a worker who refuses to violate a standard or files a complaint concerning a violation has administrative remedies available in case he is disciplined or discharged for his action.²² This type of protection is critical for farmworkers who earn on average less than \$6,000 per year and can ill afford to jeopardize their employment.²³ EPA enforcement, which is handled largely by the state departments of agriculture, is also generally less effective than that of OSHA. By letter of October 20, 1988, the EPA informed OSHA that it did not intend to conduct any programmed inspections of agricultural establishments to secure compliance with the WPS. Instead, all of EPA's enforcement efforts will be driven by complaints. Similarly, many of the states which enforce EPA regulations, like North Carolina, inspect only in response to complaints. This is grossly inadequate. By contrast, while OSHA's enforcement of its agricultural standards has left much to be desired, in FY 1992, for example, OSHA conducted 504 routine field sanitation inspections and 10 inspections which were prompted by complaints. Similarly, the state-plan states conducted 426 field sanitation inspections of which only 31 were in response to complaints. As these figures demonstrate, an enforcement system

²² See 29 U.S.C. § 660(c).

²³ It is not uncommon for workers who are poisoned with pesticides to be terminated without justification. This occurred to the Michigan farmworker, James Mitschelen, and the crewleader, in the Balm, Florida crew poisoning, Jose Mendoza -- even though no legitimate reason was provided for their discharge.

that is triggered entirely by complaints will result in almost no inspections at all. This is the opposite of what's needed since it is widely recognized that to secure compliance with new requirements an enforcement agency must visibly enforce the standards through frequent inspections.

The Enforcement Record Of the State Departments of Agriculture is Not Exemplary: The state departments of agriculture (which will enforce the WPS) have been notably reluctant to enforce EPA's worker protection standards against the growers, whom they view as their constituents. One of the most egregious examples of a state's failure to enforce pesticide laws is Arizona. In 1990, the Arizona Auditor General released a report documenting gross deficiencies in enforcement of pesticide laws on the part of state agencies, including the state agricultural department, called the Arizona Commission of Agriculture and Horticulture. The Auditor General cited the close relationship between the state's agricultural industry and the Commission as one of the reasons for the lack of commitment to enforcement.

The Auditor General found that, among other things, the Commission routinely refused to investigate pesticide complaints by community members and farmworkers; did not pursue known violations; did not investigate incidents thoroughly; downgraded violations following closed-door meetings with violators; deliberately allowed statutes of limitations to expire without taking disciplinary action; and failed to punish repeat violators. For example, an incident in which a farmworker child almost died from playing in

bags of improperly disposed pesticide concentrate resulted in a \$150 fine for the grower, no civil or criminal actions, and an explanation by the Commission that the child's father was really to blame. The failure to adequately enforce the WPS could, of itself, render the regulations nugatory.

Pesticide Illness and Injury Reporting: Finally, under existing EPA regulations, there is no requirement that employers record or report occupational illnesses or injuries caused by pesticide exposure. As a consequence, government regulators are deprived of a critical tool in identifying the products and practices that cause substantial harm. By contrast, under OSHA regulations, employers are required to keep a log of occupational illnesses and injuries²⁴ and make these records available to government inspectors upon request.²⁵

In every respect the EPA regulations and enforcement efforts are not as effective as the protections of OSHA. In light of the many serious illnesses and injuries caused by pesticide poisoning, farmworkers deserve increased protections at least comparable to those afforded to all other workers by OSHA.

III. INCREASED WORKER PROTECTIONS ARE JUSTIFIED ON COST-BENEFIT GROUNDS

The EPA analyzed the costs and benefits accruing from the WPS in a detailed Regulatory Impact Analysis, which comprehensively surveyed much of the literature on farmworker poisonings and

²⁴ 29 C.F.R. § 1904.2.

²⁵ Id. at § 1904.7.

employer costs. Their analysis amply demonstrates that the benefits to workers -- and growers -- from reduced accidents and injuries -- far exceeds the costs of compliance. Nonetheless, the Agency analysis actually underestimated the benefits and overstated the costs.

For example, the EPA's analysis of benefits was based on extrapolations of data, based on a hired workforce of 850,000 farmworkers. In fact, OSHA estimates that there are 2.5 million hired farmworkers, who will benefit from these requirements.²⁶ Consequently, the estimate of worker benefits should be increased three-fold. In addition, although the EPA acknowledged that there are serious chronic illnesses and injuries caused by exposure to pesticides, e.g., cancer and birth defects, it did not quantify the number of such cases or the high costs associated with them. This, too, makes the estimate of benefits far too low. On the cost side, however, the EPA failed to fully account for the extent to which these requirements are already mandated by large agricultural states (covering many workers). Thus, for example, California already requires decontamination water for all farmworkers and imposes longer reentry intervals than those required by the WPS. Texas requires training of workers and imposes a minimum reentry interval of 24 hours for all pesticides used on labor intensive crops; Washington State requires training and posting that meet or exceed the federal requirements. Consequently, the costs of complying with the federal regulation are actually substantially

²⁶ 52 Fed. Reg. 16050 (May 1, 1987).

lower than the Agency estimates.

Nor will there be any significant increase in consumer prices, as a recent report of the California Department of Food and Agriculture ("CDFA") hypothesizes.²⁷ In essence, the CDFA report asserts that since the minimum reentry interval under the new WPS will be 12 hours, growers of lettuce, broccoli, cauliflower and celery will experience a 1% or 5% decrease in yield, which will lead to an increase of \$232 million in consumer prices. The Report also complains that the WPS requirements of training, notification and employer liability are too burdensome. The CDFA report is flawed in a number of respects, including the following:

1. "The most serious problem with the assessment is the apparent total lack of data."²⁸ The information used in the report is derived from a "non-random subset of impacted growers" with additional input from unidentified industry leaders and econometric modeling of the result.²⁹ "Without some evidence of scientifically based data or valid expert opinion, any model, regardless of methodological rigor, is of questionable value. No justification is provided for the validity of the 49 growers' responses or whether their views were similar to non-respondents. The assessment stated that large differences exist in impacts on

²⁷See D. Sunding, et al., "Economic Impacts of the Federal Worker Protection Standard on Production Agriculture in California" (October 1993).

²⁸ Memorandum from Alan Schrieber, Pesticide Coordinator, Washington State University to Dan Ford, Evergreen Legal Services, dated November 8, 1993 at 2 ("Schrieber").

²⁹ ID.

growers based on size of operation (page 16 of the assessment). No information is provided on whether the size of operation of the 49 respondents was reflective of California.³⁰

2. There is no support given for the assertion that yields will decrease by 1% or 5%. The "claims of biological impacts in the absence of data, cited studies or evidence of expert opinion demonstrates an unbalanced unscientific approach to the analysis." Since this is the linchpin of the Report, the allegedly resulting economic harm to growers and consumers must be disregarded.

3. The Report asserts that lettuce growers would accept yield losses, rather than switch to the available alternative Balan because Balan would cost an additional \$35 per acre. It must be inferred, therefore, that "if yield losses did occur they would be less than \$35 per acre" -- otherwise it would be economically sensible for the growers to use the alternative product. "Losses of \$35 per acre or less would amount to yield reductions worth less than 1%."³¹ Thus, both the 1% and 5% yield reduction scenarios are refuted by the Report's own statements.

4. In fact, for crops such as lettuce (which cannot be stored), one of the primary determining factors in yield is market price at the time of harvest. When the price is low, only premium heads are harvested and the rest is plowed under; when the price is high all available heads are picked.

5. Although the Report makes much of the consequences of time

³⁰ Id.

³¹ Schrieber at 3.

of irrigation on seed germination, many more seeds are planted than are required to germinate. Thus, the lettuce is thinned after the crop begins to grow. In addition, depending on the weather, from 10-60% of the lettuce crop may be transplanted plants, rather than direct seed, and there is no need to rapidly irrigate the transplants. This use of transplanted plants is wholly ignored by the Report.

6. Although the growers complain that they will not be able to send irrigators back into the field for 12 hours after the application of Kerb, the Report fails to note that Kerb is a possible human carcinogen which is very persistent in the field (with a 30-day half-life in soil). Even though the label prohibits the harvesting of any lettuce from a Kerb-treated field for 55 days -- to protect consumer safety -- growers want to expose workers to the product only minutes after it has been applied. This shows a blatant disregard for the health and safety of the irrigators involved. In fact, irrigation workers report that they are now frequently required to reenter lettuce fields treated with Kerb while the pesticide is still wet -- in violation of current law.³²

6. "Only impacts unfavorable to imposition of WPS were considered in the economic assessment. The benefits accruing from reduced farm worker poisonings were not considered as part of this

³² In addition, waiting 12 hours to protect the safety of irrigation workers would not delay irrigation as long as the Report asserts, because irrigation pipe can be laid in an entire field in 1-3 hours, not the 8 hours claimed by the Report.

economic assessment."³³

For these reasons and others stated in the testimony of Michael Johnston, the CDFA report should be disregarded.

CONCLUSION

In sum, farmworkers face serious risks from exposure to pesticides. It is now time for the agricultural industry to spend its time and vast resources on educating growers and pesticide applicators about the requirements of the WPS and complying with these regulations on time. There have already been too many delays and too many needless injuries among poisoned farmworkers.

While the WPS is a modest step forward in improving worker protections, far more must be done: farmworkers should be given the same protections as other workers enjoy under OSHA and dangerous pesticides must be taken off the market.

³³ Schrieber at 3.

TO: U.S. CONGRESS AND GENERAL PUBLIC
FROM: JOSE MENDOZA
DATE: 10 November 1993
SUBJECT: SUMMARY OF PERSONAL TESTIMONY REGARDING
WORKER PROTECTION STANDARDS

On Nov. 15th., 1989, I was acting as crew leader with about 30 workers for a Florida Grower. I was given specific instructions by my supervisor when and where to take my crew to work. That day we were instructed to start picking cauliflower at about 8:00 a.m. We were not notified by anyone that the field we were working had been sprayed with the pesticide phosdrin the day before, nor were we advised to wear any protective equipment or clothing.

About 1 1/2 - 2 hours later that day, a worker came to me saying he had a head ache and was feeling dizzy. Then another 3-4 came to me with the same problems and I immediately notified my supervisor. He told me to have them cool off for a minute to see if it would go away. But the workers were getting worse and some starting fainting in the field. My supervisor never bothered to go and personally check out the problem. In the meantime, many more workers were falling in the fields. Including my crew, there were about a total of 200 people working that field. By early that afternoon about 80 workers had gotten sick and had to be rushed to the hospital.

I, along with some other workers, took as many ill people as possible to the clinic in Ruskin. The grower did not provide any transportation to the clinic. When we got there, the doctor had determined that the workers had been poisoned and ordered that everyone be taken out of the field. He also informed the proper authorities. Up to this point, we had not received any instructions from the grower.

I was given specific instructions by my supervisor when and where to go to work. It is not for me and the workers to determine what field we will work at any given time. This is strictly up to my boss. I had been working for the grower for about 10 years up to the date

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MENDOZA CONGRESSIONAL TESTIMONY

of the incident, and I have no knowledge of any worker or crew leader ever being notified when a particular field is sprayed with insecticide. When my crew and I went to work in the field on that day no one had notified or warned us that the field we were working on had been sprayed the day before. Later I learned from the Doctor that we are supposed to wait 48 hours until we go into a field that is sprayed with phosdrin.

As far as I know, there isn't any kind of training for the farmworker or crew leader on anything about pesticides. Even the people who spray don't seem to know what they are doing. No one told us to wait 48 hours before going on a field that had just been sprayed. I learned this from the doctor after the incident.

I learned from the doctor that when the pesticide is still wet, we are supposed to be supplied with special face masks, gloves, protective coats, and special boots for this type of work. We were not ever told to wear any type of protective clothing. Our normal work clothes only consist of long sleeve shirts, work pants and shoes.

My primary concern after the incident was to ensure the continued health and safety of the workers under my supervision who had suffered from the effects of the poison. Under the doctors instructions, they were to continue to be treated indefinitely. I attempted to contact the grower to notify him that I would not be putting the workers to work until they got the doctor's release. He put some of those people back to work anyway. I attempted to go back to work as well, but they refused to rehire me.

Those workers that were poisoned on Nov. 15th, 1989, suffered from: dizziness, excessive headaches, eye problems, nausea, vomiting, numbness in the limbs, among other problems. One lady even suffered a miscarriage. Their condition forced many of them out of work for over six months. Despite their physical condition, they are all forced to work due to economic hardships. They all have families to support and can't afford to be away from work. Some continue to work for the grower on a temporary basis; and others move around in search for work.

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MENDOZA CONGRESSIONAL TESTIMONY

I would like to see you strengthen the protection for workers. Workers should be told how to protect themselves and what risks they are being exposed to. They should be provided all the protective clothes and equipment to prevent their exposure. They should know when it is safe to reenter a field. The fields should be posted with warning signs that we can read. A list of chemicals used on the fields for the last 30 days should be centrally posted. Water should be available in the fields in the event of an accident where workers need to be decontaminated.

If these types of protections for the worker would have been in place when this incident took place, we could have prevented this awful accident from happening. Because they were not, many honest, hard-working citizens like myself and those exposed to pesticides on a daily basis will continue to suffer the consequences.



RURAL OPPORTUNITIES, Inc.

N.Y.S. Operations
339 East Avenue, Suite 401
Rochester, New York 14604
(716) 546-7180

November 8, 1993

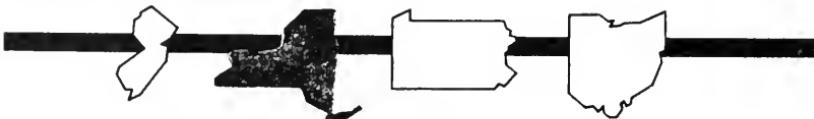
U.S. House of Representatives
Committee on Agriculture
Subcommittee on Department Operations and Nutrition
Room 1301, Longworth House Office building
Washington, DC 20515

RE: Worker Protection Standards

Dear House Agriculture Subcommittee Member;

I would like to thank you for inviting me to this hearing to present a very practical side of training farmworkers in pesticide safety. My name is Jan Cox, I am the Safety and Health Administrator for Rural Opportunities Incorporated. Rural Opportunities is a four state not for profit organization that creates and provides opportunities for farmworkers and other disenfranchised people to confront and overcome barriers that systematically prevent them from gaining access to economic, educational, social and political resources. Rural Opportunities has been directly serving farmworkers for twenty-four (24) years. The foundation of our organization's comprehensive delivery system is a diverse, committed and skilled farmworker governed Board of Directors and staff. Rural Opportunities is a direct serve organization affiliated with the Association of Farmworker Opportunity Programs, who has given earlier testimony.

I have lived and worked in the agricultural community all of my life. My husband and I had a small farm for twenty (20) years. I worked away from the home as well. For seventeen (17) years I was a seventh and eighth grade English teacher in a rural school composed of farmer and farmworker children. Over seven years ago I joined Rural Opportunities in a position that required that I develop a curriculum to teach pesticide safety to farmworkers and their families.



Serving farmworkers and other rural poor since 1969

Rural Opportunities, Inc. - WPS - page 2

We initially developed a program which brought pesticide safety education directly to farmworkers in New York State. Our goal was to provide information to farmworkers about New York State's Right to Know Law, which has many of the same components as the Environmental Protection Agency's Worker Protection Standards. Our funding for this program is from the New York State Department of Labor. We were given a small grant and asked to give pesticide safety education to the farmworkers in all agricultural areas of New York.

There was no current material available to adapt to the farmworkers needs, so our first task was to develop appropriate curriculum. We developed a forty-six (46) page pictorial handbook that addressed the issues of pesticide safety at a fourth to fifth grade reading level in English and then translated this book into Spanish, Haitian-Creole and Polish at the same reading level. We felt that even at this reading level the concepts were difficult to comprehend in a second language, so our second task was to devise a system to deliver this material to the workers in their primary language. Remember, that we have a very small grant, so we had to be creative. We developed a train the trainer program which allowed us to train members of the agricultural community to train their peers. These trainers go directly to the farms and deliver the information to the farmworkers. We had some difficulty in the beginning accessing the farmworkers at the farm sites or in the camps where they live. We then began to work with the farm community. Farmers can be great at what they do, but they are not all teachers, yet they are required by New York States Right to Know to train their workers in pesticide safety each year. We are teachers, so we teamed up with the farmers to give these workshops. The farmers call us when they have a new group of workers and one of our trainers agrees to a given time and place and we deliver the workshop, for the farmer, free of direct charge. We have found this to be extremely productive for both the farmer and the farmworker. We train over 10,000 farmworkers each growing season in the New York State Right to Know Law.

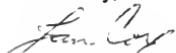
Rural Opportunities, Inc. - WPS - page 3

Our pesticide safety program at Rural Opportunities is very similar to the program that the EPA is introducing in April of 1994. In fact our program is one of the base programs used to develop the national program, and I have been one of the master teachers that AFOP has had leading their train the trainer program for the EPA Worker Protection Standards.

Where will our program be, come April 1994. We are very concerned. It would take very little adjustment for our program to give the EPA Pesticide Educational material instead of the New York State Right to Know, but the EPA has not allowed for funding to make our program part of the national program. They are, at this point, leaving everything up to the individual state. New York has very little funding for this project, and they are not willing to share. They also want and have been given control over issuing certification cards. So if the Department of Labor decided to continue funding our program, the workers who we train, with the appropriate material and certainly in an appropriate manner, will not receive a certification card. What will this do to the validity of our program? It could make all of our meaningful work - valueless. The state is not filling in the gap the demise of our program would create, instead the state has asked that I help them do five or six workshops next season. Their plan is to spread these across the state. We may reach some farmers, but, I doubt if we will reach one (1) farmworker with our states program.

The EPA must insure that programs that are already established in an area can continue to operate. It is difficult to maintain an equal and parallel strata of training and certification at both the state and national level, but this must be maintained to insure that all existing programs can be utilized by the farming community.

Sincerely,


Jan Cox

Rural Opportunities, Inc.

Safety and Health Administrator

Testimony of Michael A. Johnston

U.S. House of Representatives

Department of Agriculture

Department Operations and Nutrition Subcommittee

November 10, 1993

Good morning ladies and gentleman, Mister Chairman, distinguished witnesses. My name is Michael Johnston, and I am a Union Representative at Teamsters Local 890 in Salinas, California.

Teamsters Local 890 represents nearly 7,500 farmworkers throughout California and Arizona. We represent both nursery workers and field workers. The bulk of them work in the growing and harvesting of lettuce, celery, broccoli and cauliflower. Approximately 15% of the workers harvesting these commodities in California and Arizona are our members. They harvest crops grown by approximately 60 medium size growers in the Salinas valley, the San Joaquin Valley, the Imperial Valley and the Yuma growing area.

The people whom we represent work in exactly the sector of California's agricultural industry which is focused on in the October, 1993 report from the California Department of Food and Agriculture with which you are being presented today. It was with great interest, therefore, that I read the report late last week. I was astounded by the biased presentation and shoddy methodology and logic of the document. While it purports to be an objective assessment of the impact of the federal Worker Protection Standard on a representative segment of California agriculture, the CDFA report is a non-

Michael Johnston
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scientific document which simply advocates for as little pesticide regulation as possible.

I would like to first explain some of the weaknesses of this report, and then I would like to discuss why the particular conditions of the California fresh vegetable industry mandate exactly the kind of notice requirements and training called for in the WPS.

The most basic problem with the CDFA report is the lack of any valid source for their data. The report states that the Department "...conducted a survey of growers and agricultural commissioners..." and that "comments were received from 49 respondents." These respondents were then interviewed, along with "other industry leaders." Therefore, according to the report itself, the only growers and agricultural commissioners interviewed were those who chose to respond to the survey in the first place, presumably those who had objections to the WPS. Even had this sample been larger than 49, the fact that it was completely self-selected raises serious questions about the objectivity of the results. As for the unnamed "industry leaders" who were interviewed, all that I can say is that we are the largest representative of workers in the segment of the industry which this report deals with and no one called us for an interview. I assume that the "industry leaders" were pesticide applicators, pesticide manufacturers and agribusiness lobbying groups.

If worker advocates came to you and asked you to hold a hearing to overturn regulations which had been nearly ten

years in the making and which were already in the process of being implemented, based on a paper claiming to draw objective scientific conclusions from a tiny sample made up only of advocates and workers who had complaints about this policy, you would not give us the time of day.

Further perusing the report, I came to the assertion that there would be a yield decline of either one or five percent as a result of the application of the WPS. Nowhere were these numbers substantiated in any manner whatsoever. In fact, I interviewed the operations managers for several of the largest lettuce shippers in the country to ask them about the impact of the reentry requirements on spraying of pre emergent herbicides when planting lettuce. I was told that if one were to plant seed and spray Kerb late in the day and then irrigate in the morning, thereby complying with the 12 hour rule, there would be virtually no loss of yield, as the winds are quiet at night and there is little heat. According to them, the only other change in cultural practices which might result would be the possibility of using a slightly larger quantity of seed. They said that the only area where there might be enough heat that that would not work would be in the Imperial Valley. I would note that the report states that only 20% of Imperial Valley growers even use Kerb, so it appears that there are alternative acceptable cultural practices available there. I also read the label for Kerb, which states that if irrigation immediately after spraying is not available and there are high temperatures the Kerb can be me-

chanically incorporated into the soil. In the CDFA report the possible lettuce yield losses are completely unsubstantiated, what starts on one page of the report as a "possible" yield loss ends up on the next page as a "predicted" yield loss, and the report blindly denies the fact that there are various acceptable alternative cultural practices.

Next, the CDFA report states that they analyze the impact using basic values "...taken from a study by Lichtenberg et al. (1988) for the USEPA on the impacts of canceling parathion for use on lettuce." The report then refers to the "...demand elasticity for lettuce estimated by Lichtenberg..." This interested me greatly, as the relationship of lettuce price to yield and other factors is notoriously difficult to predict, so I went and got the Lichtenberg report. I was stunned when I read it and found that the word "lettuce" does not appear anywhere in it.

The Lichtenberg report goes into great detail on the relationship between yield and price in three tree crops, almonds, plums and prunes, and the impact of the elimination of parathion on the prices of those commodities. That is all. It has nothing to do with either lettuce or the other fresh vegetables to which the CDFA report applies the same economic formula, broccoli, celery and cauliflower. Tree fruit acreage in production changes only very slowly from year to year, because the capital investment and time span involved in bringing an orchard into production dictate that once you have an orchard, you continue to harvest all of the crop every year

until you tear the orchard out. Fresh vegetables, on the other hand, are planted on land that can sustain a variety of crops, and planted acreage can and does vary dramatically from year to year and from month to month. Furthermore, much of the price swings in the fresh vegetable industry relate to week to week swings in supply when wet weather prevents planting for a few weeks or when the growers guess wrong and all plant at the same time. Tree fruit is harvested at the same time every year. Prunes and almonds are crops that are essentially non-perishable.

I recently interviewed a number of growers and agricultural commissioners as part of a study to try and ascertain the various factors that affect yield in the fresh vegetable industry, and every one of them told me that the primary factor affecting yield was market price at the time of harvest. If the price is low, only the best crop is harvested, if the price is high, every scraggly head of lettuce gets cut and sold. Lettuce is not a tree fruit or nut. All of the economic impact figures in the CDFA report are totally unusable.

The report then applies the same ridiculous methodology to broccoli, cauliflower and celery that was applied to lettuce, while giving even less detail. The reports' economic conclusions are every bit as insupportable for these crops, because they continue to treat the vegetable row crop yield/price relationship as though they were tree fruits.

I never did get to see what the Lichtenberg report had predicted for loss of yield in lettuce due to parathion,

since the report did not talk about lettuce. I do, however, recall that when parathion was completely eliminated in the lettuce in late 1991 there was a very similar set of predictions that yield would drop precipitously. It is worthy of note that according to the California Department of Agriculture, the average yield per acre for California iceberg lettuce in the five years preceding the elimination of parathion (1987-1991) was 290 cartons, whereas in 1992, the first full year after the elimination of parathion, the average yield climbed to 335 cartons per acre. I submit that the CDFA report makes the same sort of exaggerated case for reduced yields that was made on parathion, with just as little basis.

I would now like to address the positive aspects of the WPS in the fresh vegetable industry. As the CDFA report correctly points out, the fresh vegetable industry in California is dominated by medium size farms which grow a variety of crops in small fields with widely staggered planting times. For this reason, training and notification of workers other than pesticide mixers, loaders and applicators, which is often not required by current California regulations, is essential to ensure adequate worker protection in the fresh vegetable industry.

According to a 1993 report from the School of Public Health at the University of California, Berkeley, (Preventing Pesticide-related Illness in California Agriculture, William S. Pease, et al) lettuce is ranked fifth among all California crops in the rate of pesticide injury to workers, but only

11% of those injuries are suffered by mixers, loaders and applicators. The rest are suffered by other workers who are often doing either irrigation or harvesting work in fields adjacent to fields where pesticides have been applied. Of the injuries in lettuce, 82% are systemic or respiratory problems. It is often nearly impossible for workers or medical personnel to trace the causative agent, as the workers are generally not aware of what had been sprayed in fields other than the fields in which they were working.

For this reason, the requirements that all workers who will be entering fields within 30 days after the end of a reentry period be trained in pesticide safety issues and that all workers within one quarter mile be orally notified are essential. Equally important is the requirement that sprayings be posted in a central location so that workers can identify what has been sprayed without exposing themselves to potential retaliation, real or imagined, from their employers.

The notification and training requirements are not overly burdensome, and in my experience with employers operating under the existing California regulations, could easily be accomplished, effectuating a very tangible benefit in worker safety for a token price.

As farm worker representatives we have a great interest in the regulations which have been so long in the works at the EPA. While these regulations are not everything that we might have hoped for, they are a significant step in dealing

with some of the weaknesses in the California pesticide regulation system, and they implement on a national scale some protections which until now have been extended only to farm workers in California. I urge you to move forward with implementation of these regulations, rather than bowing to pressure to weaken them further.

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Testimony of
Robert A. Carson,Jr.
National Cotton Council of America
Before the
House Subcommittee on Agriculture,
Department Operations and Nutrition

November 10, 1993

Thank you Mr. Chairman. My name is Robert A. Carson Jr. I am a cotton producer from Marks, Mississippi and a member of the National Cotton Council's Task Force on Environmental Issues. I am presenting this statement on behalf of the National Cotton Council, the central trade organization of the U. S. cotton industry.

We appreciate the opportunity to present our views on the Worker Protection Standards. When the development of worker protection standards began, the National Cotton Council was a major player in the negotiations. We were part of a 25 member regulatory negotiation advisory committee formed by EPA in 1985 to develop revisions to the Worker Protection Standard. During our involvement with this committee, the Council felt it was having constructive input and the group was making headway toward some difficult issues. The Committee draft version of the Standards, published for comment in 1988, was generally acceptable to the cotton industry.

At that point negotiations ceased and moved behind the closed doors of EPA. EPA worked alone and published a final rule in August of 1992 which was significantly changed the earlier version. The final regulations and its 140 page "How To Comply Manual" are quite complex and include numerous rules for complying with the standard. In this regard, it has become more of a specification standard rather than one based on performance. This hearing gives us the opportunity to once again formally offer our input on these regulations, although we recognize that the regulation is already a final rule.

The impact of the Worker Protection Standards are far-reaching. The EPA reports that the Standards affect almost 4 million workers and 500,000 agricultural employers. It is also reported that about 8 to 10 thousand product labels must be changed.

Farm worker safety has long been a priority for agriculture. Advances in application technology and equipment design have greatly reduced the risk of exposure to cotton production employees. Most employers stress the importance of overall farm safety including safe handling and application of pesticides. For example, all of my employees are trained as certified applicators and operate tractors with closed cabs.

It is with this background that we now seek to work with EPA to make these regulations feasible for commercial cotton production and without adversely affecting the level of worker protection. Some of the rules are unnecessary, impractical, too complex and too costly to

implement and regulate. For example, rules restricting reentry to treated fields for lengthy periods interfere with care of the crop, particularly irrigation. Requirements for personal protective equipment could pose a serious health risk to farm workers due to heat exhaustion from the typical 90 to 100 degree temperatures in Mississippi cotton fields. In this case, the cure is more dangerous than the problem.

Now let me address three of our specific concerns in more detail. One relates to Restricted Reentry Intervals; the second requests the need for an allowance for incidental, short-term contact; and the third relates to the use of personal protective equipment in summertime heat. We are seeking either exceptions or favorable interpretative guidance from EPA on these issues.

About 40% of the cotton in the Mid South is supplied with supplemental irrigation and all western agriculture is irrigated. Irrigation activities usually coincide with the use of Category I and II products with 24 to 48 hour Reentry Intervals. Irrigation water is commonly applied to fields using either gated pipe or polypropylene pipe at the end of the field. Irrigation workers have minimal contact with treated surfaces because they work mainly at the end of the field to keep the water flowing down each furrow. Center pivot irrigation systems are also prevalent in the Cotton Belt and require hands-on maintenance during operation.

However, the Worker Protection Standards provide that, while a re-entry interval is in effect, workers are only allowed a total of one hour per 24 hour period and full personal protective equipment is required for early entry. Critics would argue that irrigation and spraying should be scheduled to avoid early entry hand labor for irrigation. While this is done to the extent possible, more often than not, insects and water requirements dictate schedules during the summer months. The artificial barrier of one hour per day may not meet the critical operational requirements by workers during irrigation. Additionally the requirement for extensive personal protection equipment is excessive and impractical in our opinion.

Regulations concerning irrigation workers are top priority because we feel that present rules as we understand them are clearly not functional. Since there is only limited contact with treated surfaces, a more reasonable protective clothing requirement and an allowance for longer access time would address a problem area we have identified. We plan to continue to work with EPA to develop guidelines to minimize worker contact with treated plants at ends of rows and plant-free buffer strips for pipe placements.

Another example of problems associated with reentry intervals and personal protection equipment requirements are situations where short term incidental contact may occur. We do not believe current regulations address such circumstances. One example of a problem of excessive interpretation of the standard is the need for a tractor operator to enter treated fields during combination pesticide/cultivation operations which would be within the reentry period. Depending upon the product being applied, current regulations would require this tractor operator to put on extra protective equipment such as coveralls, gloves and possibly a respirator, dismount the tractor, make the necessary adjustments or checks, and re-enter the tractor after removing the extra garments and equipment. All of this effort would be required for a task that

may otherwise have taken only minutes.

Rather than be required to put on extensive personal protection equipment as called for in the regulation, a more reasonable alternative could be a requirement for gloves, boots and perhaps an apron. These adaptations along with the decontamination equipment required - which could be as basic as a container of clean water, soap and paper towels - would provide adequate protection for the worker and yet be practical as to application.

In addition to our main points other considerations and impacts bear noting. Extensive training of employers and their workers will be required under this regulation and it is our understanding that no money has been made available by EPA to states for education and implementation. Adequate funding and personnel must be made available to states to assist producers in meeting these requirements.

Producers will be required to post fields and ensure that workers are properly notified as to pesticide applications. While posting and notification requirements, as we understand them, do not appear to be overly burdensome, they do increase management costs. In addition to these added costs, as stated earlier, product manufacturers are required to amend virtually every product label. These costs will also be directly reflected in the price of these products to producers.

As pointed out in this statement, we view some of the current regulations as too restrictive while others counter that they do not go far enough. While we support the goals of the Worker Protection Standards - to protect workers from occupational exposure to pesticides, we must express concern about the ever increasing regulatory burden being placed on production agriculture.

Although not the intended affect of these regulations, many agricultural employers are concerned about the potential for increased unfounded law suits from disgruntled employees for alleged non-compliance to these standards. Therefore, we strongly urge Congress to avoid any further consideration of additional regulations until these are fully implemented and their effectiveness fully evaluated. It is also critical that EPA continue to cooperate with agriculture to ensure that compliance is feasible and enforcement is fair.

The key to compliance with these regulations and adequate protection for the work force is effective communication with EPA and state regulatory agencies. We have discussed these and other points with EPA prior to this hearing and commend the agency for its willingness to get a better understanding of production agriculture. We hosted a meeting with EPA officials last August in Stoneville, MS where numerous questions were raised and actual field and aerial application operations were observed. We also continue our dialogue with state officials who will be charged with enforcement. It is our intention to continue communication with both groups to press our concerns and the need for practical solutions.

In summary, we ask this committee to also consider the farmers of this country when the

implications of Worker Protective Standards are calculated. We urge Congress to stress the importance of cooperation by EPA with production agriculture in finding practical methods to meeting these new regulations. Again we thank you for the opportunity to present our views on the Worker Protection Standards and we applaud your efforts to examine the regulations and its effects on U.S. agriculture.



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Testimony of the Agricultural Retailers Association

before the
House Agricultural Committee
Subcommittee on Department Operations and Nutrition

concerning the
U.S. Environmental Protection Agency's
Worker Protection Standard

presented by
George Smith
George Smith Ag Service Inc.
Keenes, Illinois

November 10, 1993

Hello, my name is George Smith. I operate four fertilizer production plants and also serve as a retailer dealer for crop protection chemicals, seed and feed in Keenes, Illinois. Thank you for this opportunity for me to express the Agricultural Retailers Association's concerns regarding EPA's Worker Protection Standard.

The Agricultural Retailers Association represents over 6000 farm supply retail outlets like mine across the United States and over 80 percent of the retail sales of fertilizers and crop protection chemicals in the U.S. These retail outlets are often the primary source of information for farmers and other pesticide applicators. Also, many of these retail dealers are themselves custom pesticide applicators. ARA's members are therefore directly affected by these regulations.

ARA largely supports EPA's efforts to ensure the safe use of pesticides and protection of farm workers and handlers. Clear, practical, worker protection guidelines are long overdue, particularly for farm employees working in labor-intensive crops such as fruit, vegetable, and others that require multiple applications of insecticides and other pesticides. ARA has had several opportunities to provide information and voice its concerns about the Worker Protect Standard and Guidance documents to EPA during the last year.

ARA is pleased with many provisions of EPA's Worker Protection Standard, particularly options for labeling products already in the channels of trade. ARA is also pleased with EPA's decision to provide pesticide applicators with the choice between notifying workers and employees orally or with posted signs. Furthermore, we believe that EPA's decision to require posted warnings signs is reasonable for all pesticides with active ingredients classified in toxicity category I (one).

However, ARA members do have several concerns about the final version of the Worker Protection Standard and its recently released guidance documents. ARA's concerns are largely based on EPA's procedure and schedule, the scope of the worker protection regulations, and the increasing burden of duplicative federal and state worker safety training programs.

Regarding EPA's implementation procedure and schedule, retail dealers object to EPA's inflexibility in establishing regulatory deadlines despite the agency's inability to meet its own deadlines for providing guidance documents, and other materials necessary for training and compliance with the Worker Protection Standard. The Worker Protection Standard Final Rule required revised labeling on all products sold or distributed by registrants after April 21,

1994, and it required revised labeling on all products remaining in the channels of trade after October 23, 1995. These regulatory deadlines seemed achievable at that time; however, EPA's detailed guidance for revised labeling was delayed by almost six months until April 1993, with additional clarifications issued in August 1993. ARA believes that this delay has hampered registrants' ability to amend labels, which will subsequently increase the relabeling burden of the Worker Protection Standard on retail dealers.

Concerning the scope of the Worker Protection Standard, we believe that many requirements are sometimes so burdensome, and in some cases unnecessary, that many farmers and farm employees will disregard all of the Worker Protection Standard requirements, including those requirements that are important and necessary. We believe this is especially true in the requirements for posting and removing warning signs, and in the requirements for certain personal protective equipment.

The Worker Protection Standard requires applicators to post warning signs prior to application of certain pesticides, and these signs must then be removed within three days after the end of the prescribed reentry interval. The sign currently prescribed by the standard does not provide information on the date of

pesticide application or the date of safe reentry. It is clear that the intent of the regulation is to establish that a posted field should not be entered. However, sign removal on diversified farms with many crops and on large farm operations is time consuming and burdensome. ARA believes that the requirement to remove signs is impractical, and with minor modifications to the text of the sign, removal within three days would be unnecessary.

We encourage EPA to modify the format of the required signs to explicitly state the reentry interval specific to that field. The standard format for the sign as purchased could include two blank lines for date of pesticide application and the date of safe reentry. For example, if a field is treated today, November 10, with a pesticide with a 72-hour reentry interval, the posted sign could warn workers that the field was treated today and should not be entered until after November 13. After the reentry interval has passed, the timing of the removal of the warning sign is no longer of consequence with this type of sign.

Without listed dates, workers must assume that the field is unsafe until all signs are removed. This assumption is made assuming strict adherence to sign-posting requirements by their employer. However, if their employer does not

strictly adhere to the requirements of the standard, there is no safe or standard way to interpret these signs. A generic sign with blank lines (as described above) is as economical and more practical than the sign prescribed by EPA, and it is safer because it cannot be easily misinterpreted.

ARA is similarly concerned that requirements for personal protective equipment may be too extensive. Because minimum personal protective equipment such as coveralls and chemical resistant gloves are required for all pesticides, including less hazardous pesticides in toxicity categories III and IV, farm workers may disregard personal protective equipment requirements altogether. Such disregard will almost be the rule in the case of protective coveralls, particularly during conditions of extreme heat. Overprotective and unnecessary warnings and requirements will compromise those warnings and requirements that are important and necessary. ARA believes EPA should encourage overprotection, but not require overprotection.

Finally, ARA is very concerned with the increasing burden of overlapping worker safety training requirements. EPA's worker protection standard has many provisions already required by Occupational Safety and Health

Administration hazard communication requirements and Department of Transportation Hazardous Material requirements.

All of these worker safety regulations have independent training requirements with different certification or retraining requirements. Such training requirements and costs have nearly tripled during the last few years. While EPA has addressed some of the overlapping and conflicting requirements of the Worker Protection Standard and the OSHA Hazard Communication regulations, the regulated industry has not seen suitably similar correlations to other worker safety regulations.

The regulated community supports efforts to protect their employees and other workers. Furthermore, the regulated community wishes to do business in full compliance with all federal laws. However, the duplicative requirements of different agencies are very burdensome, they make compliance very difficult and confusing, and they reflect an absence of inter-agency communication. This lack of communication greatly detracts from the underlying purpose and intent of the worker protection regulations.

In summary, ARA encourages EPA to recognize the increasing relabeling and training burdens on retail dealers and provide for appropriate schedule flexibility and assistance. Similarly, we encourage EPA to consider minor modifications to the prescribed warning signs and requirements for personal protective equipment to ensure safety and the highest rate of compliance.

In closing, I want to repeat that the members of the Agricultural Retailers Association support EPA's efforts to ensure the safe use of pesticides and protect farm workers. We believe the concerns we've presented and the changes we've suggested will lead to a more functional and protective worker protection program. ARA is grateful for this opportunity to share its concerns with this committee, and we appreciate your efforts to develop a more workable and protective worker protection plan. Thank you.

For more information, please contact Jim Egenrieder of the Agricultural Retailers Association, 1115 15th Street, NW, Suite 300, Washington, D.C. 20005 (202-457-0825).

Statement of Tupper H. Dorsey
on Behalf of the
National Council of Agricultural Employers
Before the
U. S. House of Representatives
Committee on Agriculture
Subcommittee on Department Operations and Nutrition
Washington, D.C.
November 10, 1993

I appreciate this opportunity to testify today on behalf of the National Council of Agricultural Employers (NCAE). My name is Tupper Dorsey and I am Vice President of Moore & Dorsey, a fruit, vegetable and horticultural farming operation in Berryville, Virginia. I am a member of the NCAE's Board of Directors and Executive Committee and serve as Chairman of the Council's EPA/OSHA Committee. Based in Washington, D.C., NCAE is the only national association representing growers, cooperatives and agricultural organizations exclusively on farm labor issues. Nationwide, the Council represents agricultural employers who hire about 75 percent of the farm work force.

Agricultural employers are very concerned about the working and living conditions of farmworkers. We commend the Subcommittee for exploring the Environmental Protection Agency's (EPA) implementation of the Worker Protection Standards (WPS) for agricultural pesticides. Growers and agricultural associations have a history of working with federal, state, and local bodies to develop programs and laws to serve and protect agricultural workers. NCAE worked hand-in-hand with EPA during the failed negotiations with farmworker advocates when the WPS was first being drafted.

Regretfully, after the extensively revised final standards were drafted, no further opportunity was provided by EPA for industry comment. The Council still believes that an additional comment period would have greatly improved the final regulations published on August 21, 1992. Nevertheless, NCAE is pleased that EPA has involved the Council and other grower representatives, farmworker advocates and responsible government agencies in the implementation process. This opportunity for involvement, however, has been very limited for growers -- allowing us to come in at the tail-end of the approval process for the "How to Comply Manual" and other educational materials.

Educational Programs

Agricultural employers and commodity groups are highly concerned because very little effort has been made to educate growers on their responsibilities under the new WPS. Beyond the "How to Comply Manual," "Quick Reference Guide" and a short slide show which gives a quick overview of the standards, no

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comprehensive educational effort has been generated for those who will ultimately be responsible for compliance with the WPS.

Much of the implementation focus of EPA has centered on the worker/handler safety training component of the WPS. The Council agrees that safety training for farmworkers is important, but more emphasis needs to be given to educating the farmers on all aspects of the WPS so that a safe work environment can be maintained. Even though EPA has very limited resources for the actual implementation of the standards, farmworker groups obtained \$485,000 in fiscal years 1992 and 1993 for development of safety training programs for farmworkers. And, the U. S. Department of Agriculture's (USDA) Cooperative Extension Service this year was given \$100,000 by EPA for a satellite broadcast to train the trainers on the worker safety training provisions. Part of the broadcast will be an overview of the complete standard. This broadcast, however, will not be offered in all localities due to shortages of funds at the state level to provide moderators at viewing sites.

Even with this emphasis on the worker safety training, the training verification process itself is still not finalized. We are now five short months away from the effective date for the training requirements. Agricultural operations will be hard pressed to find training-verified workers. Since agricultural employers are ultimately responsible for ensuring that the training is given, a concerted effort needs to be made to educate growers on how to train the workers. Due to the lack of time remaining before the standards become fully effective, and due to the complexity of trying to train large numbers of workers hired on a daily basis, the 15-day grace period for safety training will be very important to growers. By having the grace period, agricultural employers will be able to set up weekly or biweekly training sessions instead of daily sessions. Since the workers are not allowed into the fields during the restricted entry interval (REI), (except under a few limited circumstances), these workers are not being exposed to unnecessary danger during the 15 separate days of entry after the REI is completed (five days after October 20, 1997).

NCAE, in conjunction with the Committee for Farmworker Programs, this year worked to have added to the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Bill - 1994 language encouraging EPA to provide education and training to farmworkers and agricultural employers. This training would be authorized under the National Environmental Education Act and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Funds for this education and training, however, were not specified by Congress. EPA is again telling agricultural employers that no funds are available for the education of growers.

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The Council requests that Congress make changes to FIFRA specifically authorizing EPA to institute an educational grant program to provide grants to agricultural associations, along with the Cooperative Extension Service as currently authorized, in order to effectively educate growers on their responsibilities and obligations under the WPS. We furthermore request that Congress appropriate \$3,000,000 for this grant program to be evenly divided between educating growers on all of the provisions of the WPS and providing worker/handler safety training to farmworkers through the farmworker organizations.

This action will assist the agricultural industry in two ways. First, it will provide farmers with the knowledge necessary to stay in compliance with the WPS. And, secondly, it will provide growers with an additional resource to turn to for assistance with the training of workers. This training, however, should be limited to the safety training requirements of the WPS. To go beyond pesticide safety will only serve to dilute the importance of this training and to potentially confuse the workers with irrelevant information.

Exception Mechanism

NCAE is also concerned with the mechanism EPA set up for allowing exceptions to the REIs. Comments were accepted on this mechanism during the fall of last year, but they were accepted without the intention of making any changes to the process. This process is so onerous that few farming operations will be able to obtain exceptions. The final rule establishes REIs of from 12 to 48 hours for any products which do not have a previously established entry interval. There are several instances where generic, permanent and interim REIs of this length or longer will pose problems for growers prohibited by such REIs from performing routine hand labor tasks. During the promulgation of this final rule, EPA contracted with Development Planning and Research Associates (DPRA) for an "Analysis of Proposed Reentry Interval Regulations Under FIFRA." This study showed that an REI of up to 48-hours would adversely affect a number of crops. The study did not take into consideration longer intervals or a total prohibition of hand labor tasks as provided for in the final rule.

When promulgating this prohibition of hand labor tasks during the REI, EPA did not adjust its estimate of the cost impact of the final rule from its cost estimate of the draft proposal. Under the draft proposal, EPA provided for "routine entry for unlimited time to areas under a restricted entry interval" if PPE, decontamination and training were provided. The final rule prohibits all hand labor tasks until the REI has expired. The cost estimates, however remain unchanged even though the final rule is more stringent.

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EPA has provided for an exception to the prohibition of hand labor tasks during the REIs for the cut flower industry. Such a reentry provision permitting necessary tasks where personal protective equipment (PPE) is utilized would also be appropriate for other crops where a strict prohibition would adversely affect the industry. As demonstrated in the DPRA study, problems most often will arise in situations where there are multiple harvests over a short period of time. Examples include the harvesting of strawberries, cherry tomatoes, tomatoes and cucumbers. Also, as pointed out to the Subcommittee earlier, an exception is needed for irrigation activities during the REI which typically take longer to perform than the one hour exception provided for in the rule.

The procedure EPA set up for exceptions to the REI requires agricultural groups to provide detailed economic and technical data, (including feasibility data on safety concerns, heat-related illness concerns, and mitigating factors), for not only the product and practice for which the exception is being requested, but for all alternative practices. Many agricultural groups do not have the economic or technical resources to provide this type of detailed data. The exception mechanism would better serve the public if EPA provided for an application procedure whereby grower groups could simply request an exception from the REI restrictions and have EPA consult with the U.S. Department of Agriculture (USDA) as to the appropriateness of the exception. USDA and EPA would more readily have the data available upon which to judge the merits of an exception request than agricultural groups.

Conclusion

The larger agricultural employers are able to hire human resources professionals to keep track of the myriad of labor laws which apply to agriculture. The smaller employers cannot, and, therefore, have to fight an uphill battle to be kept up-to-date on not only all aspects of production, marketing, distribution and trade issues, but also their obligations under the labor laws and regulations. These growers would greatly benefit, and farmworkers through them would benefit, from an orchestrated effort at the federal level to keep growers abreast of these statutory requirements. An educational grant program would go far to insuring that growers are in compliance. Enforcement actions are only effective after the harm has been done. Educational efforts would help to prevent the harm in the first place.

And, compliance with the WPS will be more workable if an effective mechanism could be developed for obtaining exceptions to REIs where necessary. But, again, keep in mind that many farmers and agricultural organizations do not have the resources available to provide detailed feasibility and safety data. This information is already on hand at EPA and USDA.

Testimony of
Shelly A. Tunis, Attorney, representing
The Yuma Vegetable Shippers Association
before the
Agriculture Subcommittee on
Department Operations and Nutrition
United States House of Representatives
November 10, 1993

Re: The Environmental Protection Agency
Worker Protection Standards for Agricultural Pesticides

Mr. Chairman, and members of the Subcommittee, thank you for the opportunity to present testimony before your Subcommittee on the very important issue of the Environmental Protection Agency Worker Protection Standards for Agricultural Pesticides. My name is Shelly Tunis and I am an attorney who represents the Yuma Vegetable Shippers Association. The people I represent have numerous concerns about the current Worker Protection Standards. I will not be able to fully explain all the anxieties our members have expressed in this statement; however, I will discuss several general topics. First, I would like to present some information about the Yuma Vegetable Shippers Association.

Yuma Vegetable Shippers Association

The Yuma Vegetable Shippers Association is comprised of growers, packers and shippers of fresh fruit and vegetables produced in the area surrounding Yuma, Arizona. Approximately 60,000 acres of fresh vegetables are grown and harvested in the Yuma area during the growing season from September through April. During the winter months, the Yuma area is the primary source of iceberg lettuce for the United States. The area also supplies a major portion of other fresh vegetables such as broccoli and cauliflower to the people of the United States. Yuma agriculture is not only important to the people of Yuma who rely on jobs directly or indirectly related to vegetable production, but it is also significant to the millions of people across this country who depend on quality fresh vegetables during the winter months.

For the past five months, the Yuma Vegetable Shippers Association has been providing information to our members about the EPA Worker Protection Standards that are scheduled to be

fully implemented in April, 1994. The overwhelming response of the membership has been that the EPA Worker Protection Standards as written are ineffectual and unreasonable. Compliance with the Standards will be inordinately expensive and the Standards will do comparatively little to reduce the likelihood of agricultural workers contracting pesticide illnesses.

Members of the Yuma Vegetable Shippers Association are deeply committed to the safety of their work force. Many of their workers have been their employees for years. Such relationships are built and maintained by mutual concern, trust and respect. As one farmer stated, "I would not place my workers in a situation involving pesticides that I would not feel comfortable also placing my children in. I am not going to expose my workers to unnecessary risks."

Our members are currently regulated by the State of Arizona's pesticide worker safety program. Arizona takes pride in an effective and economically viable program. Over the years, the majority of incidences of pesticide illnesses in Arizona have been the result of misuse of structural pesticides, not agricultural pesticides, according to the Arizona Department of Health Services. As discussed below, our members believe the Federal Worker Protection Standards will eviscerate the efficient, enforceable and protective standards set by the State of Arizona.

Entry restrictions for short-term activities

Section 170.112 of the EPA Worker Protection Standard requires that a worker may not enter a treated area during a restricted-entry interval to perform certain activities. A worker may not enter until at least 4 hours after the application. The worker may then work in the treated area for no longer than 1 hour during any 24 hour period only if all the requirements for training, personal protective equipment, decontamination facilities and other measures are met.

Impact on irrigation

The requirement of remaining in the treated area for no longer than 1 hour during a 24 hour period will place severe restrictions on any farmer who relies on irrigation. All of Yuma agriculture is dependent on irrigation. Irrigation water must be ordered a week in advance and is closely coordinated within irrigation water districts. A farmer may not know exactly when during the day the irrigation water will be available. Similarly, a farmer may not foresee when the pest control advisor will report that the crop must be sprayed within the next 12 hours because of a particular pest problem. Although most irrigators remain at the edge of a field by the ditches, it is quite possible to have an irrigator perform work within the

treated field because pipes break or shovel work needs to be done during irrigation. This type of activity can easily consume more than an hour's time during a 24 hour period.

To ensure compliance with this regulation, farmers have identified two solutions. First, farmers would have to schedule 24 irrigators for each treated and irrigated field. This would necessitate hiring only part-time irrigators if such irrigators could be found who would be willing to work the modified schedules. The second option is to begin planting vegetables later in Autumn. The cooler Autumn temperatures reduce the need for water. The cooler temperatures also reduce the insect populations and consequently, the need for pesticide applications. However, this late planting would very likely lead to nationwide shortages of fresh vegetables during the holidays of November and December.

Yuma farmers do not understand why the current Arizona standard for irrigators is not sufficient. In Arizona, all irrigators are required to wear boots and gloves if they enter a treated field before a restricted entry interval expires. There is no time restriction on remaining in the treated area. The Arizona requirement is enforceable and it is sufficient to protect irrigators against pesticide illnesses. In fact, for the past fifteen years, the Yuma farmers have never known of an irrigator experiencing pesticide illnesses.

Entry for other short term activities

Farmers in Yuma routinely enter a field before the expiration of a restricted entry interval for a number of reasons. They check to see if the pesticide has adequately killed the pest or if one pesticide is more effective than another in killing a particular pest. Farmers examine the condition of the plants to see if the plants need to receive water or if the plants need to be cultivated. They enter a treated area to change the rate of irrigation water being applied.

Many farmers said they never wear personal protective equipment when they briefly check the fields during a restricted entry interval. It is not that these farmers are dare devils who enjoy the thrill of being exposed to pesticides. On the contrary, during their many years of experience, they have become very aware of the dangers of pesticide exposure and they take precautions to prevent pesticide illnesses for themselves and their workers. The problem with the EPA requirements regarding entry into areas restricted entry intervals is that no one, including EPA, has shown the farmers a scientifically based reason to justify the farmers changing their current practices. Furthermore, if this EPA requirement becomes law, these farmers stated they do not intend to carry all the personal protective equipment in their vehicles nor have a decontamination facility available just in case they decide to check a field. The farmers

stated that they would be forced to break the law and hope they do not get caught.

Specific information about pesticide applications

Section 170.122 requires that before a pesticide application is made or before an employee begins his work period after the application, specific written information about each pesticide application must be posted at a central location that is accessible to employees. The information must be displayed and kept legible for at least 30 days after the restricted-entry interval has expired.

Farm fields in Yuma are spread apart and are various sizes. It is not uncommon for some agricultural establishments in Yuma to have fields that are forty miles apart. In addition, the fields range in size from 15 to 360 acres and there are times when there are as many as forty separate parcels in an agricultural establishment. The only central location for the farm is the main office which may be located twenty miles from the nearest field. There is no central location where the hundreds of employees of the farmer and the employees of the farm labor contractor, custom applicator and pest control advisor meet to receive instructions. The Yuma farmers do not know of a single place on their farm that the specific application information could be posted unless the information is kept in the main office where the application information is already kept.

The greatest problem that farmers foresee in complying with this requirement is one of timing. If a commercial aerial applicator sprays a field, the application may occur at 2:00 a.m. The pilot will return to the landing strip and fill out the report concerning the conditions of the application. The pilot turns the report in to his office at approximately 7:00 or 8:00 a.m. The office personnel then fax the report to the farmer's office usually by 8:30 a.m., but sometimes later. The timing problem occurs because the farmer's employees and contract workers may show up for work at 6:00 a.m., at least 2½ hours before the farmer may have a copy of the report about the application.

Yuma farmers estimate that between 700 to 1200 pesticide applications are annually made on their farm with approximately 5% to 15% of that amount that are rescheduled due to weather or equipment problems. Consequently, the farmer must also decide whether to post the information before the application takes place (with the knowledge that the application may never take place or that the information on the application may not be accurate) or wait until the farmer has the accurate application information, usually after workers have arrived for their first work period.

Under the requirement of §170.122, the Yuma farmers are faced with finding an accessible central location within a forty mile radius to post the specific application information and letting all their employees and contractors know of the location. The farmer must pick a location that will be accessible to the workers, but the farmer also must secure the reports so that they will survive all weather conditions and not be taken during the 30 day period.

There are also other reasons why Yuma farmers find this requirement incredible. Most say that the information will seldom, if ever, be used by workers. The basic presumption of this regulation is that farmers will not provide their workers with information about pesticides or will retaliate against workers who request such information. The information therefore must be posted where the employee may obtain it without the knowledge of the farmer. This type of Federal requirement institutionalizes a lack of respect and trust between farmers and their workers.

Moreover, because of the number of applications made on a Yuma agricultural establishment within a 30 day period, farmers believe it will be very difficult for anyone to find a particular report and decipher the information contained on the report without assistance of a person knowledgeable about the farm operation and the pesticide application process.

Again, farmers ask what is the basis for this regulation? If there is a suspected pesticide illness shortly after workers arrive for work, the farmers indicated that they would immediately call the applicator to obtain the necessary application information. In any event, the farmers believe it would be much more helpful to have accurate pesticide application information available at their office and to assist workers in obtaining the information they desired instead of having the worker review a stack of approximately one hundred pesticide application reports.

Liability of the owner of the agricultural establishment

The Worker Protection Standards provide that an agricultural owner is equally responsible for ensuring that people with whom the farmer contracts provide the worker protection requirements for the independent contractors' employees. The question farmers ask is "Why?" Why does EPA want to hold farmers responsible for another employer's workers? What is the purpose of this regulation? How will this requirement help ensure compliance with the Worker Protection Standards?

Yuma farmers routinely contract for the services of custom applicators, pest control advisors and farm labor contractors. They contract with these people because the contractors perform specialized types of labor and the contractors often utilize

costly pieces of equipment which are not economically feasible for the farmer to own. Farmers do not attempt to shift liability by hiring these contractors. Many times, the farmer is being more cautious by hiring contractors to perform services that the farmer's employees are not trained to perform. It is extremely inequitable to hold a farmer responsible for acts committed by workers who are not directly employed by the farmer. The farmer has no supervisory control over such workers and by contract or by law the farmer cannot direct the actions of the independent workers.

If farmers become liable for ensuring that independent contractors are fulfilling the requirements of the Worker Protection Standards, farmers who wish to comply with the Standards have few choices. First, the farmer may choose to do all the work with the farmer's own employees. This may actually create more risk for workers who may be asked to perform services for which they do not possess the necessary skills. Second, the farmer may be forced to employ a highly trained individual whose sole responsibility is to ensure that all independent contractors with whom the farmer contracts are complying with the necessary worker protection laws. Neither option is cost effective nor efficient. And again, the farmers ask what purpose is this regulation serving?

Posting and oral notification of workers

New pesticide product labeling requires either posting the treated area or orally notifying all workers who come within $\frac{1}{4}$ mile of the treated area in accordance with §170.120. In some cases, the label will require both posting and oral notification.

Yuma vegetable farmers are currently required by Arizona law to post fields that have a restricted entry interval of 48 hours or greater. A number of vegetable farmers require their pest control advisors to post all pesticide applications. With all the farmers' workers and the workers of independent contractors coming and going around treated areas, the farmers believe posting adds a safety measure to their operation. Many Yuma vegetable farmers see a benefit to posting all treated areas and therefore go beyond what is required by Arizona law.

On the other hand, Yuma vegetable farmers cannot envision orally notifying all their own employees, much less orally notifying all employees of farm labor contractors, custom applicators and pest control advisors who might come within $\frac{1}{4}$ mile of a treated area with a restricted entry interval.

A solution proposed by one farmer would be to hire one person to coordinate the necessary oral warnings among the hundreds of workers with whom the farmer either contracts for services or employs. This solution is neither economically

viable nor any more effective than posting warning signs.

Furthermore, the farmers believe that violations of the oral notification standard will be difficult to document. Evidence will revolve around be one person's word versus another. The farmers do not see the need to have a law that is not an effective safety measure and is nearly impossible to enforce.

Providing decontamination facilities for 30 days after a restricted entry interval

Section 170.150 requires a farmer to provide a decontamination facility for a worker who performs any activity in an area where, within the last 30 days, a pesticide has been applied or a restricted entry interval has been in effect. The decontamination facility must include enough water for routine washing and emergency eyeflushing, soap and single-use towels and be located not more than $\frac{1}{4}$ mile from where the worker is working or $\frac{1}{4}$ mile from the nearest place of vehicular access.

When applied to a Yuma vegetable farm, this requirement can appear ridiculous. For example, a pesticide application is made on day 1. The restricted entry interval is 48 hours. On days 6 through 20 the field is harvested and the vegetables are sent to New York state for marketing. On day 27, a tractor driver is sent to disc the remains of the field. The tractor driver has some contact with the plants that were treated on day 1. Even though the people of New York have been eating the quality vegetables for over two weeks, the farmer must provide the decontamination facility to the tractor driver so he may wash off any suspected pesticide residues.

Farmers are of the opinion that they would have to provide a decontamination facility for virtually every area that has had a restricted entry interval in effect during the previous 30 days in order to comply with this regulation. However, the costs of providing a decontamination facility for each area would be prohibitive.

Furthermore, farmers believe there is no scientific basis for this standard. Vegetable farmers who track pesticide residues say that the residues have degraded well before the expiration of a 30 day period. Farmers are also concerned that this provision may lead to wide-spread fears about the safety of fruit and vegetables. The standard as written will add relatively little to the safety of workers, but it will significantly increase the costs of producing a crop as well as increasing anxieties of consumers.

Potential for fraud

The Worker Protection Standards present new opportunities

for fraud. Because §170.130 requires workers to present a certificate to the agricultural employer in order to work, counterfeit training certificates may become a new and profitable business. A "black market" for certificates will be created if training is not readily available at the time and place workers need it.

Workers may also use the requirement of emergency medical assistance in §170.160 to obtain routine medical care. Workers who do not have health insurance and who need to see a doctor may indicate to their employer that they believe they have a pesticide illness. During the influenza season in the winter months, workers who have nausea and headaches may actually believe they have a pesticide illness or they may tell their employer they have a pesticide illness in order to be seen by a doctor. Because many pesticide illnesses have the same symptoms as influenza, an agricultural employer may be forced to obtain medical care for the worker. The farmer's workers compensation premiums could rise dramatically if workers who do not have health insurance start using this system to obtain medical care for illnesses that have similar symptoms to pesticide illnesses.

In order to prevent such fraud, farmers need more guidance on when they must transport a worker to an emergency medical facility if the worker complains of symptoms that mimic a common, infectious disease. Guidance is especially crucial for employers of workers who only come into contact with a treated area after the expiration of a restricted entry interval.

Conclusion

Farmers do not know how they will be able to comply with the EPA Worker Protection Standards. They cannot comprehend the basis of these new standards and they believe the complex regulations create too many chances for unsuspecting violations. The intent of any law should be compliance; without the heavy hand of the enforcement officer on everyone's shoulder. This Standard, however, will be unenforceable because farmers do not agree with the regulations, nor understand the reasons for compliance.

When farmers view these Federal Worker Protection Standards they see few options. The Standards are extremely complicated and they present a multitude of problems. Farmers do not know how they will be able to hire all the highly skilled workers and supervisors that they believe these Standards require.

Many farmers believe they have the option of going out of business or breaking the law. This statement should not be taken lightly. Yuma farmers are very proud of providing quality fresh vegetables for the people of the United States and they are law-abiding citizens who do not enjoy the notion of breaking the law.

When I asked one farmer his three major concerns about the EPA Worker Protection Standards, he replied, "One, that the law will become effective. Two, that the law will actually be enforced. Three, where am I going to be able to find another job at my age?"

His statement eloquently, yet concisely expresses the similar fears of his colleagues. There must be major modifications to the present EPA Worker Protection Standards to make them cost effective, beneficial and enforceable.

Thank you Mr. Chairman for this opportunity to share some of the concerns of the members of the Yuma Vegetable Shippers Association with this Subcommittee.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
TO THE HOUSE AGRICULTURE SUBCOMMITTEE ON DEPARTMENT
OPERATIONS AND NUTRITION REGARDING
THE ENVIRONMENTAL PROTECTION AGENCY
WORKER PROTECTION STANDARDS FOR AGRICULTURAL PESTICIDES

Presented by
Elizabeth D. Whitley
Director
Governmental Relations

November 10, 1993

Mr. Chairman, my name is Libby Whitley. I am Director of Government Relations for the American Farm Bureau Federation (AFBF). The American Farm Bureau Federation is the nation's largest voluntary general farm organization representing almost four million member families in fifty states and Puerto Rico. Farm Bureau farm and ranch members produce virtually every type of agricultural commodity grown commercially in the United States.

Farm Bureau appreciates this opportunity to comment on the Environmental Protection Agency's (EPA) new 40 CFR Part 170 farmworker pesticide protection standards (57 Federal Register 38102) which were published as a final rule on August 21 and which became effective on October 20, 1992.

In brief, Mr. Chairman, AFBF supports the nature and intent of the new regulatory structure but believes the regulation will be very expensive, complicated and burdensome for the average farmer. We expect increased workers' compensation claims and are worried about uninsurable liabilities associated with EPA's vague allusions about long-term health implications from pesticide exposure. Last, we believe that EPA has failed utterly to adequately justify its cost-benefit figures.

These regulations expand the previous scope of farmworker pesticide protection standards established in 1974 to not only field workers performing hand labor operations but to forestry, nursery and greenhouse workers and pesticide handlers as well.

The U.S. Department of Agriculture (USDA) estimates that these regulations will apply to perhaps 1.8 million hired agricultural workers. The regulation does not apply to unpaid workers and members of farmers' immediate families, which represent the balance of the 4-plus million agricultural workforce.

AFBF has been significantly involved with promulgation of this regulation since EPA first proposed revising the existing 1974 regulations in 1984. AFBF was a participant in the 1985-86 negotiated rulemaking. In fact, the long delay in finalizing the current regulations was due partially to objections raised by diverse agricultural interests, including USDA. AFBF commends USDA for its insightful analysis of many problems and inaccuracies inherent in the new regulations.

USDA's published comments of March 27, 1992 (57 Federal Register 42472) found several important issues in EPA's draft final rule and its supporting documents which it felt should be addressed, including:

- From a purely economic perspective based on the Regulatory Impact Analysis (RIA), dated March 31, 1991, the estimated costs and anticipated benefits of this rule do not appear to be supportable.
- Numbers of farmworkers affected were grossly inflated. USDA estimated that, far from the 313,000 estimated "pesticide exposure incidents" each year, initial EPA assessments of 12,500 were far more accurate.

I have attached a copy of the USDA Federal Register analysis to this statement and encourage the Committee to review it carefully. While EPA made some adjustments in the assumptions numbers in the final rule, USDA's criticism still remains valid. The estimated costs and benefits are not supportable.

The worker protection standards impose extensive and costly compliance burdens on agricultural employers. Among other things, there are extensive notice requirements, both oral and written postings, and substantial obligations for the provision and maintenance of protective equipment and decontamination materials. While such requirements will significantly impact on all agricultural operations, they are particularly burdensome for small family farming operations. These requirements apply the instant a single non-family worker is employed.

Farm Bureau continues to advocate exempting the small farm operation with fewer than 10 employees for the same reasons that the EPA has seen fit to exclude the farmer and immediate family from most of the compliance requirements of the final rule. It is unlikely that the farmer will knowingly or carelessly expose himself or his family to harmful pesticide exposure, and it is just as unlikely that the small, close working situation involving a few non-family workers will change that presumption.

EPA has implied that, as a practical matter, small farms need not worry much about extensive enforcement of the worker protection standards in their case because of the limited resources of the federal and state enforcement agencies. We are concerned with this logic since all farmers are legally obligated to comply regardless of whether it is beneficial or cost effective for the farmer or enforcement personnel. In any event, complaints usually bring on inspections, even from over-worked and under-funded enforcement agencies.

Various interest groups argue that unwillingness or inability of an agency to comprehensively enforce agricultural worker protection laws and regulations should be the basis for legislating what are called "private rights of action", or citizens' suits. The argument is that, if an agency cannot effectively enforce a law, then private citizens should be empowered to enforce it on their own behalf. A good example of this is the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) which

contains such a provision. Worker lawsuits brought under MSPA have resulted frequently in farmer bankruptcies. Unfortunately, many if not most such lawsuits are primarily over technical, not major, violations of MSPA and all too often are used for harassment.

Efforts have been made in the past to include a private right of action provision in FIFRA, arguing that EPA and state enforcement agencies cannot do an adequate job enforcing regulations such as worker protection and pesticide recordkeeping.

Regulations such as the worker protection standards for pesticides offer a vast new range of technical violations to pursue in court. Farm Bureau is adamantly opposed to any amendment of FIFRA that would extend a private right of action for violation of the worker protection standards or other FIFRA regulations pertaining to the agricultural workplace. We believe that it would jeopardize the very existence of agricultural production in this country by opening every farmer to unlimited litigation.

To be candid, Mr. Chairman, AFBF believes that if Congress feels sufficiently strongly to pass a law protecting a class of citizens or U.S. residents, it should provide the enforcement agency with sufficient resources so that it can adequately enforce the law. AFBF prefers the enforcement efforts of trained federal agency officials over the "litigation lotto" mentality of private lawsuits any day.

Protecting workers from pesticide exposure is important. As I travel around the country and speak with farmers and others in the industry, my impression is that most employers are already in substantial compliance with the type of worker protections outlined in this regulation.

I am not suggesting that they are in compliance with this very technical and complicated proposal. They will need a great deal of education and training. AFBF urges this Committee to look into a formalized farm employer training module, such as is suggested in the FY94 EPA appropriations.

Further, Mr. Chairman, we endorse the concept outlined by the state departments of agriculture here today, and suggest that the agency's enforcement deadline be pushed back to October 1995. This additional time will give Farm Bureaus and other agricultural organizations time to adequately prepare their members to comply with the new regulations. It will simplify enforcement and eliminate confusion if enforcement begins at the time all pesticides must be labelled according to the 40 CFR Part 170 requirements.

In conclusion I would like to thank you, Mr. Chairman, for conducting this hearing. These new worker regulations are very important to both workers and employers, and state farm bureaus have been intensely interested in how they will be implemented. I would ask permission to forward to the Committee such additional comments as may be furnished by state farm bureaus, and ask that they be included in the record of today's hearing.

(Attachments follow:)

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 156 and 170**

[OPP-300164A; FRL-4181-9]

RIN 2070-AA49

Final Rule: Receipt of and Notification of United States Department of Agriculture Comments on Agricultural Worker Protection Standards**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; receipt and notification of USDA comments.

SUMMARY: The United States Department of Agriculture has requested that EPA publish its March 27, 1992 comments on EPA's June 1991 final regulations for the Worker Protection Standard for Agricultural Pesticides. Those final rules and associated notices for public comment were published in the *Federal Register* of August 21, 1992.

ADDRESSES: The docket has been given the document control number OPP-300164A and is available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Office of Pesticide Program's Document Control Office, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. The docket contains the final regulations published in the *Federal Register* of August 21, 1992, and a copy of the draft final rules to which USDA responded and to which references are made in this document. A detailed EPA response document to USDA's comments is also contained in the docket.

FOR FURTHER INFORMATION CONTACT: By mail: James J. Boland, Acting Chief, Occupational Safety Branch (H7508C).

Field Operations Division, Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1114, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. (703) 305-7666.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the *Federal Register*. EPA's Agricultural Worker Protection Standards, published as a Separate Part II in the *Federal Register* of August 21, 1992 (57 FR 38102), are currently available on *The Federal Bulletin Board*. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. These files are available in Postscript, Workperfect 5.1, and ASCII.

EPA issued final regulations on the Worker Protection Standard for Agricultural Pesticides (40 CFR part 170 and subpart K of 40 CFR part 156) in the *Federal Register* of August 21, 1992 (57 FR 38102). A summary of USDA's comments on the June 1991 draft version and EPA's responses to them was presented in the August 21, 1992 final regulations (see especially the section entitled "Statutory Review—U.S. Department of Agriculture"). The USDA has requested that EPA publish USDA's comments in their entirety. Therefore, EPA is issuing the substantive text of a letter from Daniel D. Haley, Administrator, Agricultural Marketing Service, USDA, dated March 27, 1992, in reply to EPA's June 1991 draft regulations on agricultural worker protection standards as follows:

The United States Department of Agriculture (USDA) has reviewed the draft final rule on the Worker Protection Standards, 40 CFR parts 156 and 170, of the Environmental Protection Agency (EPA) and offers the following comments and suggestions.

(The complete attachment is held in the committee files.)



1343 Rose Street • Honolulu, Hawaii 96819 • Phone: (808) 848-2074 • Fax: (808) 848-1921

November 8, 1993

To: *Chairman Charles Stenholm
Sub-Committee on Department Operations and Nutrition*

From: *James J. Nakatani, President
Hawaii Farm Bureau Federation*

RE: *Testimony on Worker Protection Standard*

Chairman Stenholm and Members of the House Agriculture Committee on Department Operations and Nutrition:

The Hawaii Farm Bureau Federation supports the intent of the Worker Protection Standard, however we are concerned about sections which do not accomplish the goals of the Standard.

The USDA commented on several issues of the draft WPS final rules that they felt needed to be addressed. The USDA did a fair job in evaluating the problems that smaller farms will face. However, it appears that the EPA has not implemented changes to address all of these objections within the final rule.

The Environmental Protection Agency believes that, due to this new agricultural worker protection rule, the benefits in decreasing the number and severity of pesticide related illness and injuries to agricultural employees exceed the costs of the rule to agricultural employers, pesticide handler employers and registrants. This premise does not appear to be applicable to Hawaii.

EPA's calculations estimate Hawaii to have a pesticide illness occurrence rate of about 110 cases per year. Yet when evaluating the EPA's estimated cost associated with implementing this Standard, Hawaii's entire agricultural industry would have to reduce pesticide related incidences by 674 cases annually to recover their investment in WPS related costs. Extrapolating these numbers to just the 3300 small farms in Hawaii, which would bear a higher expense in implementing the standard, a reduction of 869 cases annually would be required to absorb the cost of the program. We do not currently suffer that amount of pesticide related incidences. Hawaii's agricultural industry will bear a disproportionate burden in implementing the standard without the significantly reducing pesticide related incidences.

Farm workers in Hawaii are well aware of the easy availability of Medical care and Workmen's Compensation Benefits. If any of them felt that they had a work related illness the worker would immediately go to the doctor and the employer would be held responsible.

EPA in a letter to our Senator Inouye's inquiry on this point replied; "health insurance per se does not address the basic prevention goal of the WPS, that workers and handlers should not be exposed to pesticides in a way that may cause adverse health problems." We beg to differ from this opinion since it would not be in the interest of the employer to expose their workers to adverse conditions since this would result in increased insurance and Workmen's Compensation premiums, the very topic of major concern by the current Administration.

Farm sizes in Hawaii is relatively small. A recent guest to our farms from American Farm Bureau Federation describes them as "miniaturized farms", smaller than the usual "small farms" seen on other states. Hawaii is a small state. This results in the self-employed farmer, often trained as a certified applicator of restricted pesticides, on a small farm sharing in the routine hand labor tasks with his family and workers. His workers very often are people who are his friends or relatives of friends. He will not put himself, his family or his workers at risk intentionally.

We realize that this Standard is in Final Form. We have been encouraged by trends of the current Administration in recognizing regulatory overlap and areas in which private industry responsibility plays a greater role over Federal mandate. We hope that the same recognition could occur with this Worker Protection Standard and that States where self-initiatives are in place to protect their workers be recognized and given credit. This will mean modifications in the implementation of the Standard. However, the strength of any Federal Program is determined in its ability to serve its people.

We hope to work with you in looking for a solution to a problem to which we did not have opportunity for comment beyond the initial draft.



HAWAIIAN SUGAR PLANTERS' ASSOCIATION, 99-193 AIEA HEIGHTS DRIVE, AIEA, HAWAII
 MAILING ADDRESS & P.O. BOX 1057, AIEA, HAWAII 96701-1057
 TELEPHONE: (808) 487-5561 FAX: (808) 486-5020

November 9, 1993

Honorable Charles W. Stenholm
 House of Representatives
 1226 Longworth House Office Building
 Washington, DC 20515-4317

Dear Chairman Stenholm and Members of the House Agriculture Subcommittee on Department Operations and Nutrition:

This testimony is presented on behalf of the Hawaiian Sugar Industry and represents the positions of both workers (ILWU) and management. The worker Protection standard in its current form does not significantly improve the health and welfare of our sugarcane employees in Hawaii. The ILWU represents all of the sugar workers in Hawaii and has negotiated successfully with management to provide good working conditions. Union and management have created an atmosphere of credibility and trust between each other over the years. This has been accomplished by expending effort in areas which resulted in true benefit to the parties involved.

There is no doubt that it is possible for the Hawaii Sugarcane Industry to comply with the Standard at a cost. However, it is only one of many regulations resulting in increased costs to the industry and this one particularly has no reasonable expectation for a return. It addresses areas that have been acknowledged and acted upon by the industry over the years. For example, when rodent outbreaks occur only non-coumarin-based rodenticides are used avoiding the potential secondary and tertiary effects of these compounds in the food chain. The industry has a history of choosing and using crop protection chemicals of lesser toxicity where the choice existed. Insecticides are not used since the industry has had a successful commitment to biological controls. Diseases are under genetic control because of the implementation of an extensive screening process in the industry's variety selection program. The majority of the compounds used are in the Toxicity III and IV categories. Those products in higher categories are classified as such because of the solvents present in the formulation and are significantly diluted in the actual spray material.

This regulation attempts to fit the entire agricultural industry into a one-size fits-all regulation, which does not work. For example, the Restricted Entry Interval established for Toxicity III and IV category compounds will require our industry to follow practices which will result in higher worker exposure to pesticides, and possibly result in reversion to aerial applications. Our industry has worked hard to convert from aerial to ground application where possible to improve efficiency and reduce potential environmental problems. Timing in herbicide application is critical to the amount of material needed and the number of subsequent applications to canopy close-in. This effort would be reversed by this standard. We do not believe this was the intent of the standard. In fact, this seems to be in total opposition to EPA and Department of Agriculture pesticide goals. The 1988 proposed rule allowed for entry when 'sprays have dried and dusts have settled.' This was changed to a minimum of 12 hours since it was determined that the criteria was ambiguous. In our condition where the operation involves a preemergence herbicide application on bare ground, the criteria is easily determined. There is no ambiguity.

HAWAIIAN SUGAR PLANTERS' ASSOCIATION
Honorable Charles W. Stehholm

-2-

November 9, 1993

We recognize that the Standard has provisions for requesting exemptions. Unfortunately, there are companies within the industry whose practices "allow living within the Standard." These companies have higher costs largely due to higher chemical usage. They do not have equipment and/or labor to enable them to operate more efficiently. As written, the exemption would not be granted since there are companies that are able to comply with the Standard. This is an example where government regulation promotes poor productivity.

We have serious concerns about this Standard which is significantly different from that which was proposed in 1988. We do not feel there was adequate opportunity to comment on the changes made in the final form. We may have been lax in our pursuing the matter. However, in Hawaii, if there is a significant change to a regulation after public hearing, a new public hearing is required before the regulation becomes law. This minimizes the chance for a regulation such as the Standard.

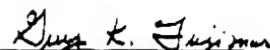
We present testimony before you today since we realize that the only way to correct the situation lies in your hands. We commend the agency for pursuing an issue which needs to be addressed in some areas of the nation. However, states that have been progressive in the area should not be penalized. In addressing comments submitted by Hawaii, EPA commented: "EPA commends pesticide safety initiatives, but it does not believe that the existence of such initiatives can be the basis for an exemption from the regulation." Self initiatives should be encouraged reducing the burden on government. Government intervention should only occur when the private sector does not demonstrate that it can do the job by itself.

We have no quarrel with the intent of this standard but do strongly believe that time periods and distances were arbitrarily determined with no scientific basis. States should be allowed to develop their own programs with more flexibility than is now allowed. Farming operations exist on two acres to thousands of acres. The details of this standard are not appropriate for many existing operations. Many of them are not appropriate for the sugar industry in Hawaii.

We appreciate this opportunity to testify and because of the time constraints were not able to address every specific concern of the Hawaii Sugarcane industry. We will be happy to provide it to you at your convenience and hope we can reach an amicable solution. Thank you for this opportunity to comment.



Don Heinz, President and Director, Experiment Station
Hawaiian Sugar Planters' Association



Guy K. Fujimura, Secretary-Treasurer
ILWU Local 142

STATEMENT OF
DR. JOSE AMADOR
CENTER DIRECTOR
TEXAS A&M RESEARCH AND EXTENSION CENTER
LOWER RIO GRAND VALLEY, TEXAS
BEFORE
SUBCOMMITTEE ON DEPARTMENT OPERATIONS AND NUTRITION
COMMITTEE ON AGRICULTURE
U.S. HOUSE OF REPRESENTATIVES

NOVEMBER 10, 1993

My name is Jose Amador. I am Center Director at the Texas A&M Research and Extension Center, in the Lower Rio Grande Valley, Texas. This testimony is offered because of my interest in the subject of teaching pesticide safety to farm workers, particularly Spanish speaking farm workers.

Before becoming Center Director, I served as Extension Plant Pathologist for south Texas for 26 years. My responsibility in this position was to develop educational programs for farmers that would assist them in implementing effective plant disease control measures, such as the use of resistant varieties, crop rotations, cultural practices, as well as the use of protective applications of fungicides.

Early in my career, it became evident to me that many workers I became involved with in demonstration projects involving pesticides were careless when applying chemicals. This was true of workers in companies whose business was pesticide applications and workers on farms where pesticides were commonly used. I knew that it was important to communicate information among these workers on how to use pesticides safely in order to prevent injuries to themselves or their families.

The safety programs that were developed were being conducted before we had laws, either State or Federal, that made it mandatory to communicate information on pesticide safety to farm workers. I was convinced then, and I am convinced now, that there is a real need for these kinds of safety programs. Even though farm worker's safety is my main concern, these educational programs are needed also to ensure that pesticides are not be misused in ways that cause crop damage, economic loss to the farmer and environmental contamination. Companies were receptive to my requests to conduct pesticide safety programs, as were the farmers whose permission I asked in order to train their workers.

When the Texas legislature passed the Right To Know Law requiring that farm workers be informed of the risks of exposure to pesticides, a sudden demand was created for educational programs on pesticide safety. The Texas Department of Agriculture developed regulations to implement the law and conducted numerous hearings throughout the State to inform farmers of their obligations under the law.

The Texas Department of Agriculture collaborated with the Texas Agricultural Extension Service and we developed educational programs using slides, radio cassettes, crop sheets and other educational means to implement an intensive education and communication effort to provide pesticide safety information.

I was personally involved in conducting many of these educational programs required by the new regulations. In a way, the new Right To Know law made my job of disseminating pesticide safety information easier, because farmers now had to provide pesticide safety programs in order to avoid non-compliance penalties from the Texas Department of Agriculture. During this period, there were times when I was conducting two or three training meetings a week.

Change in behavior can be caused by incentives and rules. I tried to provide incentives to farmers by writing letters of appreciation to them after I gave safety training to their workers. I included a list of their workers who received safety training. The farmers soon realized that this information, when kept in their files, was useful not only to provide proof of compliance with the Right To Know law, but was useful as evidence to be used to their benefit with insurance companies and workers' compensation companies. For many of these farmers, these records resulted in lower insurance premiums, an incentive that prompted some farmers and companies to conduct safety training programs more frequently than the law required.

Because I was interested in farm worker safety in general, I often convinced employers to conduct not only pesticide safety programs, but also general farm safety programs dealing with the safe use of farm equipment as well as pesticides. I have several letters in my files from agricultural employers expressing appreciation for the safety training given to their employees. In particular, they mention that their operations have been accident free for several consecutive years. A fact that they attribute to conducting safety training on a regular basis. This training also has resulted in lower insurance premiums for the employers. The employers also feel that a record of regular safety training will provide future benefits if liability issues are raised if an accident occurs.

The need for educational programs on pesticide safety is very real. In every one of my safety presentations, I ask workers if they have ever been made sick due to pesticide exposure. Frequently, I hear of experiences where this has been the case.

EPA's Occupational Safety Branch in the Pesticide Program has worked hard to develop training materials and implementation plans that will provide the training required by the law while keeping the program manageable and practical. This was a difficult task considering the diversity of farm worker groups, the regional differences in the nation's agriculture, and the range of farm operations that will be affected by the Federal Worker Protection Standard.

The Federal Worker Protection Standard will make pesticide safety information available for many workers previously not covered under State regulations. Workers in my training sessions express their appreciation for being informed of safe pesticide practices and the employers that I work with in Texas agree that information on pesticide safety must be incorporated in their operations as a good business practice.

These agricultural employers, however, are concerned with certain aspects of the regulation beyond the training provisions. They are concerned about the problems of compliance that can arise when differing State and Federal laws are in effect. These concerns need to be addressed in order to have a full and practical implementation of the Federal law. The health and safety of agricultural workers, as well as the economic well being of agricultural employers, depends on continuing constructive communication among farmers, farm workers and the agencies charged with implementing the laws affecting these groups.



AMERICAN ASSOCIATION OF NURSERYMEN

1250 I STREET, N.W. / SUITE 500 / WASHINGTON, D.C. 20005 / 202/789-2900

TESTIMONY
Before the
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON DEPARTMENT OPERATIONS AND NUTRITION
November 10, 1993

Mr. Chairman, and Members of the Subcommittee, the American Association of Nurserymen (AAN) welcomes this opportunity to present the nursery industry's views regarding the U.S. Environmental Protection Agency's (EPA) Worker Protection Standard (WPS).

BACKGROUND

The American Association of Nurserymen (AAN) is the national trade organization representing the nursery industry. AAN directly represents 2,500 nursery crop growers, landscape professionals, retail garden centers, and horticultural distribution centers. AAN represents an additional 16,000 small and family businesses through the membership of the state nursery and landscape associations.

ECONOMIC STATURE OF NURSERY INDUSTRY

Grower cash receipts for nursery and greenhouse crops were estimated to be \$9.0 billion in 1992, according to USDA's Economic Research Service. Nursery and greenhouse crops as a commodity group rank behind corn and soybeans, but ahead of such major plant crops as wheat, cotton and tobacco. Yet the industry does not receive -- and does not seek -- any federal production subsidies, price supports, or export enhancements.

NURSERY CROP PRODUCTION

Nursery and greenhouse crop production is extremely diverse. Unlike more traditional food, feed and fiber crops, nursery farms may produce hundreds or even thousands of plant species and varieties in close proximity on anywhere from a few to over 1,000 acres. Such plants may be grown in permanent or temporary greenhouses, outdoors in containers or in the ground.

Also, unlike more traditional segments of agriculture, many nursery workers are either year-round or repeat seasonal workers. The nursery industry's commitment to providing workers a safe work environment is perhaps unparalleled in all of agriculture. Nonetheless, there are circumstances where EPA's revised Worker Protection Standard will pose special hardship on nursery operations, and may frustrate implementation of innovative pest management programs.

CHALLENGES TO NURSERY OPERATIONS

The general prohibition on hand labor during reentry intervals poses the following challenges to nursery farm operations:

HAND-LABOR PROHIBITION DOES NOT ALLOW FOR LIMITED HAND LABOR AFTER SPRAYS HAVE DRIED -- REGARDLESS OF PRODUCT'S TOXICITY

Container nurseries typically grow many varieties of plants -- each with its own pest control needs -- in close proximity. Most nurseries attempt to minimize general sprays as necessary. The hand-labor prohibition does not allow for limited hand labor after sprays have dried -- such as removing plants from growing beds to prepare orders -- regardless of a product's toxicity, until after a reentry interval has expired. As an unintended result, growers may be forced to rely more on calendar-based sprays, using broad-spectrum pesticides, so that pest management can be coordinated with other labor and order-fulfillment tasks.

It must be emphasized that nurseries -- especially container nurseries -- must provide rapid service in processing and fulfilling orders year-round. The marketplace demands "just-in-time" delivery, whereby an order placed Monday can be received before the next weekend, even from a supplier across the country.

DEFINITION OF "EMERGENCY" UNDER 170.112(d) IS AMBIGUOUS

In container production, it is not uncommon for plants to blow over when high winds are encountered. Every time this happens during the growing season, a portion of the crop will be lost unless workers can stand the plants upright before the next irrigation cycle, or before the root system experiences heat damage from the sun (as little as three hours). Although EPA allows for a limited exception to reentry intervals under emergency situations, it is unclear to AAN whether the above-described situation would constitute an emergency as defined under 170.112(d).

EXPANDED REENTRY AREAS WILL HAMPER NARROW SPRING WINDOW FOR HARVESTING AND SPRAYING NURSERY CROPS

In certain field production situations, such as ball & burlap flowering tree production, there is a very narrow Spring harvest window -- measured in just a few weeks -- between the time the ground thaws and trees leaf out. Under the very best of circumstances, there may only be a few days per week when soil conditions permit digging, and weather conditions permit spraying. In this narrow window, fungicide applications must often be made at budbreak to prevent leaf diseases from rendering the crop unsalable. Other pests, such as the tent caterpillar, must receive timely spot treatments.

Under the WPS, such pest management sprays would create a "treated area plus 100 feet in all directions" restricted reentry area, severely complicating urgent harvest activities. The best conditions for harvest and spray activities will often occur at the same time. By allowing limited reentry after sprays have dried, workers harvesting deciduous trees while wearing gloves and appropriate clothing would have minimal exposure to any treated surfaces.

POSTING AND REENTRY REQUIREMENTS WILL CLOSE DOWN LARGE SECTIONS OF NURSERY OPERATIONS -- EVEN FOR SPOT TREATMENTS

Nurseries rely heavily on spot treatments for many pest management applications, such as weed control. Spot treatments minimize pesticide use, and maximize efficiency and economy. Small problem areas -- often portions of growing beds -- are targetted. Posting and reentry requirements could have the practical effect of closing down large sections of a nursery operation -- in spite of the fact that worker contact with treated surfaces would be minimal. Again, growers may be forced to consider scheduled block-by-block sprays rather than more desirable spot applications.

SIGNAGE REQUIREMENTS ARE MORE ONEROUS IN PRODUCTION NURSERIES THAN OTHER AGRICULTURAL PRODUCTION

Given the fact that most nurseries are producing a variety of crops in close proximity and using pesticides for limited treatments throughout the nursery, worker notification of pesticide applications may be most effectively done through posting, rather than oral notification. However, the signage requirements under 170.120(b) will be far more onerous in production nurseries than other agricultural production. For example, a container nursery might have thousands of growing beds that are monitored and treated individually. Such a nursery may have to purchase hundreds of such signs at considerable cost.

Developing a staking system for such signs would add a further cost burden. Permanent signposts may interfere with pesticide application, fertilizer application, irrigation, winter protection and other activities. Temporary signposts would add cost and storage requirements. Finally, nurseries would incur high labor costs associated with placing and moving signs.

RECOMMENDATIONS FOR SOLUTIONS

Working in close collaboration with nursery growers of all types, AAN has identified several solutions to address specific challenges that nursery growers will face complying with the WPS. These following solutions will facilitate full nursery industry compliance with the WPS, while protecting workers from any potential acute and chronic pesticide effects.

EPA SHOULD ESTABLISH PRODUCT-SPECIFIC -- RATHER THAN GENERIC -- REENTRY INTERVALS

AAN urges EPA to establish product-specific, rather than generic, reentry intervals. Further, EPA should designate a category of "reduced risk" pesticides that would not be subject to even the minimum 12-hour reentry interval, but rather a "sprays have dried, dusts have settled" interval. Such products could include horticultural oils, Bacillus thuringiensis, plant rooting compounds such as IBA, and other products with very low dermal toxicity or where the use pattern translates to minimal chance of exposure.

In the absence of such an exception for reduced-risk products, AAN is concerned that growers will be forced to use broader-spectrum, more toxic pesticides with good efficacy, rather than risk poorer control with "reduced-risk" products, and still face the full burden of posting or notification and the 12-hour minimum reentry interval.

EPA SHOULD PROVIDE A LIMITED EARLY ENTRY OPPORTUNITY AFTER SPRAYS HAVE DRIED AND DUSTS HAVE SETTLED

For products with a 12, 24, 48 or 72-hour reentry interval, AAN suggests that EPA provide at least a limited early entry opportunity after sprays have dried and dusts have settled, such as four hours in a 24-hour period, with appropriate personal protective clothing to prevent exposure to treated surfaces. Such a limited reentry interval would allow for workers to safely harvest field-grown plants, pull limited numbers of plants for order preparation, stand up blown-over plants, set up irrigation to water highly-perishable newly-planted crops where follow-up herbicide applications have been made, and similar tasks. This limited reentry option would also encourage growers to continue using IPM programs and spot applications.

EPA SHOULD NOT REQUIRE POSTING/ORAL NOTIFICATION AND REENTRY FOR DOWNWARD-DIRECTED SPOT APPLICATIONS

Posting/oral notification and reentry should not be required for downward-directed spot herbicide or other applications where workers will not come into contact with treated surfaces when wearing appropriate footwear.

EPA SHOULD ALLOW FOR REENTRY INTERVALS TO BE SET UPON THE TOXICITY OF A PESTICIDE'S USE SOLUTION

AAN believes that EPA should allow for reentry intervals to be set based upon toxicity of a pesticide's use solution, upon a registrant's request. AAN is concerned with reentry intervals for certain key products be 48 hours when based on the

concentrated material. However, the toxicity of the finished use solution, to which general workers may be exposed, may be much lower allowing for a reduced reentry interval for general workers.

Under this proposal, personal protective equipment requirements for applicators could still be based on toxicity of the concentrate, to which only applicators would potentially be exposed. AAN believes that providing registrants with this option would allow for reentry intervals based on sound science, meaningful protection of workers, and more reasonable accommodation of operations growing nursery and greenhouse crops.

EPA SHOULD ALLOW ALTERNATIVE NURSERY POSTING SYSTEMS

Many nurseries have developed flagging and signage systems for warning workers of pesticide applications. Workers are trained to understand their meaning. Given the unique challenges of worker notification by posting in production nurseries, AAN urges EPA to allow alternative nursery posting systems as compliance options where they may be equally effective toward achieving the WPS goals. Such alternative systems could be reviewed and approved on a case-by-case basis by EPA or its state cooperators.

EPA SHOULD CLARIFY THAT RETAIL GARDEN CENTERS ARE NOT COVERED BY WORKER PROTECTION STANDARD

Based on AAN's reading of the WPS regulations, and discussions with EPA staff, AAN has concluded that retail garden center establishments that are "not engaged in the production of agricultural plants" are not covered under the WPS. Nonetheless, several state officials have apparently received mixed messages that such establishments do fall within the purview of the regulations. It is imperative that EPA clarify that such operations are not covered by the WPS.

CONCLUSION

Mr. Chairman, AAN and the nursery industry are committed to the safety and protection of nursery workers, and the continued economic success of this important segment of agriculture. AAN believes that the recommendations outlined above would facilitate nursery compliance and achieve the desired protection of workers from the potential impacts of unintended pesticide exposure.

Thank you for this opportunity to share our concerns and solutions regarding EPA's Worker Protection Standard. We look forward to continuing to work with you, the Subcommittee and EPA on this critical issue to the nursery industry.



SOUTH CAROLINA FARM BUREAU FEDERATION

POST OFFICE BOX 754 • COLUMBIA, SOUTH CAROLINA 29207 • (803) 726-6700

The Honorable Charles Stenholm
 Chairman, House Subcommittee on Department Operations and Nutrition
 1211 Longworth House Office Bldg.
 Washington, DC 20515-4317

Dear Mr. Chairman:

As the enforcement date of the Worker Safety Protection Act draws near, I would like to share some concerns we have in South Carolina.

I want to make it clear that we are very concerned for the safety and well-being of our agricultural employees. We want to provide a safe working environment in South Carolina. However, some of the provisions of the Worker Safety Act will be very cumbersome to implement and in many cases will result in chaos on the farm.

For instance, we would request that the re-entry be waived for workers working in fields on machinery with enclosed cabs. When working in a field with this type of machinery, the workers should not come into contact with any chemicals. A more logical approach must be devised on the use of protective suits. South Carolina's summers are very hot and very humid. Since this protective clothing becomes like an oven in South Carolina's intense heat, workers could only work in the fields for very short periods of time.

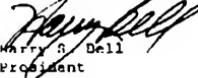
It also seems illogical to prohibit re-entry for harvest if the product label allows for immediate harvest or consumption. This is a very big concern for our U-pick operations.

Another aspect of this law which may be unique to South Carolina, or at least to the Southeast, is the farming of many different tracts. Many operations in S.C. farm up to 30 different land tracts with great distance between tracts. To have a file for chemical use on each tract, and require each farm worker to study these sheets every day before starting work will be very time consuming.

Finally, I would like to point out that I have been to a few meetings where our regulatory agency is trying to train extension agents so they can train farmers on how to implement this law. So far, I have seen much confusion and more questions than answers. I think it would be prudent if we delayed implementation of enforcement until fall of 1995. This would give Congress a chance to consider more logical approaches to farm worker's safety. It will allow EPA to get the pertinent material for training to the states and allow the states to properly train the farmers on compliance.

Thank you for your consideration of this matter.

Sincerely,


 Harry S. Dell
 President

**NORTH CAROLINA
FARM BUREAU FEDERATION**

TELEPHONE (919) 782-1705 / P. O. BOX 27766 / RALEIGH, NORTH CAROLINA 27611

**Statement of the North Carolina Farm Bureau Federation
for the Record of the House Agriculture Subcommittee
on Department Operations and Nutrition Regarding
the Environmental Protection Agency
the Worker Protection Standards**

November 17, 1993

Thank you, Mr. Chairman, for allowing us to submit testimony on the Environmental Protection Agency's Worker Protection Standards for Agricultural Pesticides. The North Carolina Farm Bureau Federation is a general farm organization representing the interests of farm and rural people in our state. North Carolina is the third most diversified agricultural state in the nation. Farmers that produce a limited number of crops and those producing a broad range of crops will experience increased time commitments, costs and on-farm management requirements due to this rule, including providing and maintaining personal protective equipment, posting placards and warnings, following newly prescribed restricted-entry intervals, and beginning on April 15th of next year, providing training for all workers.

While we have concerns about the increased responsibilities and liabilities farmers will be facing with the implementation of these revised Worker Protection Standards, we support the nature and intent of these regulations. We, in fact, encouraged the North Carolina Pesticide Board to adopt the federal rule by reference.

We support wholeheartedly the comments and concerns expressed in the letter that the North Carolina Pesticide Board recently sent to Ms. Carol M. Browner, Administrator of EPA. We understand that a copy was also sent to the Subcommittee and will be made a part of the record of the hearing held on November 10, 1993. Several of the issues outlined in their letter are of utmost concern to us. However, we'll not belabor the point of readdressing those specific concerns already brought to your attention.

Due to the lack of training materials and other outreach materials, we would like to request that EPA's enforcement schedule be delayed until October, 1995 - the date that all pesticide containers will be required to have the new labels as outlined by the new standards.

- 2 -

Staff for the North Carolina Farm Bureau Federation has already begun holding some workshops to explain the new worker protection standards and we want to ensure that all of our agricultural employers are fully versed in the requirements before enforcement efforts are begun. The North Carolina Cooperative Extension Service has not yet begun "train the trainer" programs but has committed to do so when the EPA sanctioned materials are available. We here at the Farm Bureau will continue to hold workshops for farmers on the regulations as well.

The agricultural employers that we encounter in these workshops are very much interested in "doing the right thing". They certainly agree that protecting their workers, as well as protecting their own family members is very important. They are, however, very concerned with the often vigorous and adversarial manner that North Carolina Farmworker Legal Services sues farmers over the minute "details" of such regulations. If we all could endorse and encourage compliance of the spirit of the standard and not become immersed in the technical details, more could be accomplished to protect all those involved on our farms. Notwithstanding our desire to comply with all the agricultural regulations to protect farmworkers, farmers are very concerned, and rightly so, with the details of the standard and on their behalf, we request more time for education and training.

A copy of a very detailed response to EPA dated October 3, 1988 is attached to this statement, as well as a letter to former President Bush and our most recent correspondence with EPA dated January 19, 1993.

Thank you for allowing us to submit our comments for the record.

W.B. Jenkins
W.B. Jenkins
President
North Carolina Farm Bureau Federation

WBJ:PRG

(Attachments follow:)

NORTH CAROLINA
FARM BUREAU FEDERATION

TELEPHONE (919) 782-1705 / P. O. BOX 27766 / RALEIGH, NORTH CAROLINA 27611

October 3, 1988

Document Control Officer (TS-757C)
Program Management and Support Division
Office of Pesticide Programs
Environmental Protection Agency
Room 236 CM #2
1921 Jefferson Davis Highway
Arlington, VA 22202

Document Control Number OPP-300164

Dear Sir:

The North Carolina Farm Bureau Federation is the state's largest general farm organization representing farm and rural people, with County Farm Bureaus in all 100 counties of North Carolina. Farm and rural people in North Carolina will be greatly impacted by the regulations proposed under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) expanding worker protection standards for agricultural workers that were published in the July 8, 1988 Federal Register.

This letter contains our comments on this proposal. To the extent possible, these comments reference the specific sections that are addressed; however, some comments are of a general nature and do not lend themselves to specific references.

Part 156 Subpart K--Registrant's Labeling Requirements

We agree with the agency's proposed approach to incorporate by reference on the label the majority of Part 170 requirements with product-specific requirements being included on the physical label. However, we feel that the requirement in Section 156.205 (becoming a requirement due to its placement on the label itself) that any user obtain an actual copy of Part 170 is unnecessary. We disagree that obtaining copies of Part 170 will be easy for persons covered under these regulations. Materials that are prepared to assist with compliance (such as those that EPA itself is planning to distribute) will be of more benefit to farmers than having a copy of the actual regulation.

The language in Section 156.210(c)(1) is ambiguous and should be revised to indicate precisely what EPA intends here. If the intent is that persons would be allowed to perform other tasks prior to the sprays having dried, etc. then this language should specifically say "Prior to [sprays having dried, etc.] a person may enter the area..."

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page 2

As a general comment on the label requirements described in Section 156.210, we feel that an absolute prohibition to routine hand labor is excessive, and that routine hand labor should be allowed if the worker is wearing such personal protective equipment as may be required by EPA.

Also as a general comment on Section 156.210 we are concerned that the Agency is proposing generic interim reentry intervals that may be in force and effect, but may not appear on the physical label of the product, due to the time between adoption of these regulations and the time that new labels would be affixed to the products and in the stream of commerce. Some interval of time between adoption and implementation of these regulations should be provided to allow for the necessary changes to be made on label that is physically affixed to the product.

We feel that education and training of users and handlers should be an integral part of implementation of these regulations prior to their effective date. Therefore, we request that prior to label changes and enforcement that some period of time be allowed for education and training to take place. We further request that EPA develop and conduct training programs for affected groups and provide a single, easy to read booklet that a farmer, user, or handler could refer to as questions arise about compliance.

We feel that EPA should make every effort to establish product specific reentry intervals and eliminate the use of generic intervals as soon as possible. We support EPA's decision to reject a generic 72 hour reentry period as not supported by the limited reentry data available on certain pesticides. We feel that the use of 48 and 24 hour intervals for Toxicity Category I and II organophosphates and carbamates will cause serious problems in certain segments of agriculture, such as greenhouses, where frequent reentry is necessary. EPA should examine alternative means of protection in these situations.

Part 170

Subpart A--General

Applicability--Section 170.3

We urge EPA to consider the potential impact that this regulation will have on small family farming operations and the cost and difficulty that such operations would have in complying with the proposed regulation. We request that EPA exempt small farms from all or part of the requirements of the proposal. There is precedent for such an exemption under the Occupational Safety and Health Act (OSHA) which exempts farmers employing 10 or fewer employees from having to comply with the federal field sanitation requirements.

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We are concerned that language on pages 25975 and 29576 implies that these regulations will have some lesser effect on small agricultural establishments simply because EPA as a matter of policy will not carry out a program of routine inspections. Such is not the case. Everyone subject to the regulations will have to comply with them, whether or not routine inspections are carried out. We reiterate that a small farm exemption is needed.

We support EPA's decision to not consider family members as workers for purposes of this part and commend EPA for recognizing family members as a special class not subject to all of the requirements (Section 170.3(d)).

Definitions--Section 170.5

We would like to commend EPA for revisions in definitions from earlier drafts that clarify the meanings of several terms used in the regulations. Comments on specific definitions follow:

"Handler"

We agree that workers exposed to residues of pesticides while performing tasks on previously treated fields should not be considered "handlers". We feel that this should be stated in the regulations, not just in the explanation. We also feel that "handlers" should exclude those persons who deal with disposal of used pesticide containers, not just those containers that have never been opened. This would prevent such persons as landfill operators from being considered "handlers".

"Personal Protective Equipment"

We agree that "personal protective equipment" should not include normal work attire. We feel that the definition of "normal work attire", which includes, at minimum, long pants, a long-sleeved shirt, shoes and socks, is reasonable and prudent.

"Worker"

We feel that the definition of "worker" justly does not include family members, as stated under the applicability section.

Duties of Persons Covered Under This Part--Section 170.7

The proposed regulations make the farmer/landowner liable for any violation of these regulations that occurs on his property, whether or not he had knowledge of or control over the activities being conducted. Further, such liability would attach even if the farmer had used every means within his control to prevent the violation. We strongly oppose this imposition of strict liability on farmers. We urge EPA to establish some clearly defined limits of liability of a lesser scope than this strict liability standard.

In particular, we feel that farm employers should not be liable for the actions of independent contractors or employees of independent contractors on or off their farm property. Further, farmer/landowners should not be responsible for willful and intentional violations by employees or agents when the farmer has taken every precaution at his disposal to insure compliance with the regulations. We agree with the language that specifically states that "this part does not prohibit an owner, employer, or supervisor from discharging or otherwise disciplining any worker for failure to comply with instructions to take an action required by this part or to refrain from an action prohibited by this part" and support its retention in the final rule.

Violations of This Part--Section 170.9

We appreciate the recognition by EPA that there will be circumstances where a person failed to obey instructions, and acknowledge EPA's effort to take this into account in enforcement actions (e). However, this will not substitute for what we feel to be necessary--the elimination of the strict liability standard imposed by these regulations.

Subpart B--Standards for Pesticide Handlers and Early Reentry Workers

Training--Section 170.12

This section requires that all persons covered under this subpart shall be trained; however, it is unclear when, or at what interval, this training is to take place. If this is meant to be a one-time training requirement either at the beginning of employment or at the beginning of a growing season, then this should be made clear. We support having no recordkeeping requirement for trainers.

Duties Related to Personal Protective Equipment--Section 170.16

The proposed regulations require that the farmer/landowner provide and maintain personal protective equipment used by handlers. This does not allow for the use of equipment that may be owned by a handler and brought to the work site. If a worker chooses to use his own equipment, that equipment should meet the requirement of "providing" equipment, if in all other respects the worker-owned equipment meets regulatory specifications.

We feel that the provision that prohibits the performance of tasks requiring personal protective equipment when environmental conditions may cause injury or illness should be modified or deleted from the regulations. It is unfair to make persons who have no training in health responsible for determining how various individuals will react to different environmental conditions.

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Of necessary concern to farmers is the disposal of contaminated clothing and personal protective equipment. Some specific guidelines for disposal of this clothing and equipment should be provided in the regulations, in order that this could be communicated to workers. A statement that the specific exemption from the Resource Conservation and Recovery Act (RCRA) for small generators of hazardous waste would apply to the disposal of contaminated clothing and personal protective equipment would be of tremendous benefit to the user community and the necessary action to pursue this with RCRA authorities should be taken by EPA. Barring that, the requirement that disposal be in accordance with unspecified, or as yet un promulgated, rules and regulations is unnecessary and should be deleted from this proposal.

Decontamination--Section 170.18

We agree with EPA's decision to delete from these regulations previously proposed standards for temperature, quantity, and distance from water sources. We do feel that the quality requirements, specifically that the water meet Federal Safe Drinking Water Act (SDWA) standards, are excessive in that water from private drinking water wells are not subject to the SDWA standards.

Cholinesterase Monitoring--Section 170.20

We commend EPA for not expanding the mandatory medical monitoring to private applicators and their employees. A medical monitoring program for small farms would be a tremendous financial burden and is unwarranted for private applicators and small farms due to the intermittent nature of exposure to pesticides by private applicators at these facilities.

Subpart C--Common Standards for Workers on or in Farms, Forests, Nurseries and Greenhouses

General Pesticide Safety Information--Section 170.32

We agree with EPA's decision to allow posting of general information in a prominent location but question whether this information should be required to be posted at each farm, forest, nursery or greenhouse (that may be on the same property) during the growing season. We suggest that some provision be made for centralized posting of general information at a place where workers gather to receive assignments or some other suitable location.

Emergency Duties--Section 170.34

Unfortunately, this regulation still does not specify who shall be responsible for seeing that transportation to a medical facility is provided for an worker injured or suspected of being exposed to potential injury. Therefore, the farmer/landowner is responsible under the strict liability standard established in these regulations. These regulations should specify a reasonable and responsible standard of care for workers and/or supervisors who may be on the scene and most able to make an assessment of potential injury and to provide or seek necessary transportation.

Subpart D--Special Standards for Workers on Farms and in Forests**Information about Pesticide Applications--Section 170.42**

We support the view expressed in the proposal that oral warnings are the most effective method of communication. We feel that these oral warnings should be limited to days that any reentry interval is in effect.

Also, we question whether passing through a "neighboring" area in an "open vehicle" would pose any risk of exposure, and feel that vehicular transport through such an area should not require oral warnings.

Repetitive oral warnings when there is little, real or perceived risk will lose their effectiveness.

Posting--Section 170.44

We support EPA's decision to limit posting requirements to areas that have been treated with pesticides having reentry intervals greater than 48 hours. Any period less than this imposes significant financial and management burdens on farmers. We also support the use of a generic sign, rather than a product specific warning sign. Product specific signs would be expensive and exceedingly burdensome to farmers, without providing workers much additional benefit. The proposed generic sign is sufficient to convey the necessary message without alarming workers or the general public with a skull and crossbones. We also support the proposed locations for these signs at usual points of entry, footpaths, labor camps, etc.

Reentry--Section 170.46

We support the adoption in this proposal of the longest reentry interval if two or more pesticides are used in combination, in lieu of the California interval of the longest plus 50 percent.

We feel that the requirement for early reentry workers that "Personal protective equipment specified on the label is worn" is not sufficiently clear because the labeling will reference Part 170 and may not specify that the protective equipment required under these circumstances may in fact be the equipment that is required for a handler (as set forth in the table at Section 156.216(b)). Any regulation that requires additional equipment due to early reentry should be clearly referenced here as to which specific regulations would apply under those circumstances.

We feel that EPA should adopt the standard currently used in California, Texas, and North Carolina that allows early reentry without personal protective equipment if there is "no substantial and prolonged contact" with treated surfaces (see discussion on page 25991). This is a part of the regulations where the short term exposure exception could be a useful tool (see discussion on page 25994).

Subpart E--Special Standards for Workers in Nurseries

We support an exemption for small operators of nurseries as we support an exemption for small farm operations.

It is unclear whether Christmas tree operations would be considered "nurseries", "farms", or "forests" under these regulations. North Carolina has a substantial Christmas tree industry, and those producers need to know under which of these regulations they would be covered. This could be specified in the applicable section or in the definitions section. It should be specified in the rule itself, and not in the explanation of the rulemaking process.

Subpart F--Special Standards for Workers in Greenhouses

We support an exemption for small operators of greenhouses as we support an exemption for small farm operations.

General Comments on the Proposed Regulation

We support the position of EPA to retain the national minimum standards approach, with states having the option to adopt more stringent regulations if deemed necessary.

We feel that EPA should aggressively seek regulatory responsibility in the area of Worker Protection Standards for Pesticides and EPA should insist that these standards are sufficient to meet Occupational Safety and Health Act (OSHA) requirements for hazard communication for pesticides.

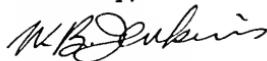
Document Control Number OPP-300164
page 8

There should be adequate time between publication of the final rule and implementation and enforcement of its provisions:

1. to allow the regulated community to become familiar with the requirements,
2. to produce any necessary training materials,
3. to implement necessary physical label changes,
4. to develop and conduct a training program for those persons covered by the regulations.

Thank you for considering our comments on these proposed regulations.

Sincerely,



W. B. JENKINS
President

WBJ/afc



**NORTH CAROLINA
FARM BUREAU FEDERATION**

TELEPHONE (919) 782-1705 / P. O. BOX 27766 / RALEIGH, NORTH CAROLINA 27611

October 28, 1991

President George Bush
White House
Washington, D.C. 20500

Re: **EPA Part 170 Farmworker Pesticide
Protection Regulations**

Dear Mr. President:

The North Carolina Farm Bureau is a general farm organization representing farm and rural people in all 100 counties in North Carolina. For the past eight years, we have been following closely the development of the proposed farmworker protection regulations. Farm and rural people in North Carolina will be greatly impacted by these regulations. We understand that the Environmental Protection Agency (EPA) has sent to Congress, the Office of Management and Budget (OMB) and the U.S. Department of Agriculture advance copies of farmworker pesticide protection regulations it intends to finalize in the near future.

Because we had grave concerns of the potential impact on agriculture, we have written comments on previously proposed regulations. Although, we believe that it is necessary to ensure an enhanced level of pesticide protection for both farmworkers and farmers, we continue to have concerns about some provisions of the final regulations. Following are some of our concerns:

(a) The farmworker pesticide protection regulations establish generic reentry intervals for work activities in pesticide-treated areas based on the general toxicity categories. We feel that the reentry periods should be product specific rather than generic.

(b) We feel that education and training of users and handlers should be an integral part of implementation prior to them becoming effective. Therefore, we request that a six (6) month period be allowed for education and training after publication but prior to enforcement. We also request that model educational materials and posters be made available to those affected.

(c) There is much overlapping with OSHA field sanitation standards and hazard communication regulations. Any duplication of standards and enforcement responsibilities must be eliminated.

(d) We do not accept EPA's cost-to-comply estimates. We feel that the new regulations will be much more costly to farmers than EPA has estimated and that the complexity of these regulations will make it extremely difficult for the small farmer to comply. We request that EPA be required to further justify the need for such comprehensive regulations and reexamine the real costs to the industry before implementation.

Thank you for allowing us to bring this to your attention.

Sincerely,

W. B. Jenkins
President



TELEPHONE (919) 782-1705 / P. O. BOX 27766 / RALEIGH, NORTH CAROLINA 27611

January 19, 1993

Public Response and Human Resource Branch
Field Operations Division (H7506C)
Office of Pesticide Programs
Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

Document Control Number:
OPP-300164G

Dear Sir or Madam:

The North Carolina Farm Bureau Federation is a general farm organization representing the interests of farm and rural people in our state. The following comments are to address the general prohibition of routine hand labor tasks during a restricted-entry interval as well as the mechanism for granting exceptions to that prohibition under EPA's Worker Protection Standards. It appears in the November 18, 1992, Federal Register notice of the reopening of the comment period that comments are to be restricted to this topic.

It is our understanding from Mr. Louis True of EPA, who appeared at a meeting in North Carolina to discuss the worker protection standards, that EPA is interested in continuing to receive information, concerns and questions regarding the entire scope of the rule, even after the adoption of the final rule and the close of comment periods, in order for the Agency to better administer the rule. In a separate letter to Mr. True we will be discussing other issues regarding aspects of the worker protection standard rule.

Prohibition of Routine Hand Labor Tasks

North Carolina is the third or fourth most diversified agricultural state in the nation. Farmers that produce a limited number of crops and those producing a broad range of crops will experience increased time commitments, costs, and on-farm management requirements due to this rule.

It remains difficult to assess the actual impact of this prohibition until approved labels with the newly prescribed restricted-entry intervals (REI's) are available. This problem was noted by USDA in its comments which were published in the September 14, 1992 Federal Register. In those comments USDA noted that they identified some interim REI's of as long as 30 days in information provided to them by EPA. Many crops can reach maturity and become worthless in 30 days.

The impact of not allowing any routine hand labor tasks for REI's that are longer than a few hours will be substantial in our

Public Response and Human Resource Branch
January 19, 1993
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estimation. The prospect of not allowing any routine hand labor tasks for days, and perhaps as long as 30 days will be devastating. There will be certain essential hand labor tasks that will need to be conducted, based on the commodity and local conditions.

A revision to this rule should be proposed to allow reentry with prescribed personal protective equipment (PPE), decontamination facilities, and training. The allowance of reentry only in an emergency that has been prescribed as such by a state official, or after having gone through the federal rulemaking process for a specific commodity (like the cut flowers and ferns exception) is cumbersome and unworkable.

It is clear that EPA did not attempt to evaluate the substantial difference between no reentry for routine hand labor tasks, and such reentry with PPE, decontamination, and training in its analysis of projected impact on farmers. Also, EPA failed to recognize the possibility that each individual chemical's registered use on particular commodities could be evaluated for its potential to qualify for an exception that could be stated on an approved label, if PPE, decontamination, and training requirements are met.

Instead the blanket prohibition of these tasks (with very limited and cumbersome exceptions) was the route chosen by EPA. We feel that when labels with new REI's are issued the blanket restriction will quickly prove to be unworkable. The method to obtain an exception (other than an officially declared emergency) that is set forth in the explanation of the rule on page 38113 means months will elapse from the time a problem is identified to the possible granting of an exception--a devastating situation for farmers. At the point when this becomes apparent, the question will be how quickly EPA will be able to respond to the situation that it has created for farmers, farm workers, and the consuming public.

Thank you for this opportunity to continue to express our concerns about the worker protection standards.

Sincerely,



W. B. Jenkins
President

WBJ:afc

Review of EPA Worker Protection Standards
for Agricultural Pesticides - November 10, 1993
Before the Subcommittee on Department Operations
Committee on Agriculture
U.S. House of Representatives

Written Comments of California Rural Legal Assistance Foundation.

California Rural Legal Assistance Foundation (CRLAF), is a nonprofit farm worker advocacy organization. CRLAF representatives who were not able to attend the November 10th Hearing respectfully submit the following written comments for the record.

Implementation of the Worker Protection Standard Must Not Be Delayed

CRLAF supports the Hearing testimony of other farmworker advocacy groups which documented the urgent need for improved farmworker protection regulations and explained how many aspects of the Federal Worker Protection Standard in fact fall far short of meeting these needs.

The California Department of Food and Agriculture Report "Economic Impacts of the Federal Worker Protection Standard on Production Agriculture in California" is seriously flawed and therefore invalid.

Professor Schreiber of Washington State University analyzed the California "economic assessment" and described it this way:

"The consistent claims of biological impacts in the absence of data, cited studies or evidence of expert opinion demonstrates an unbalanced, unscientific approach to the analysis."

He concluded that the report is a "biased attempt to discredit WPS [Worker Protection Standard]. In our view, he was courteous in his comments. The report not only failed to use valid data, but it falsely relied on and cited another study:

"Basic values for the impact analysis are taken from a study by Lichtenberg et al. (1988) for the USEPA on the impacts of canceling parathion for use on lettuce."

The cited Lichtenberg study is not about lettuce. It is about stone fruit and citrus. Moreover, parathion was banned on these crops. Rather than relying on the theory in this paper, it would be more useful to determine if the projected impacts actually

occured. With respect to lettuce, the ban of parathion had no adverse impact.

This sort of biased and misleading 'sky is falling' report is a threat to farmworkers and a disservice to growers, especially in California. It is a threat to farmworkers, because it is designed to defeat health protections for farmworkers through the juxtaposition of wildly inflated claims of economic harms.

It is a great disservice to growers, because it discredits agriculture's voice on economic issues. Unfortunately, wildly inaccurate claims of economic disaster have been routinely made by grower interests and related academic departments whenever pesticide regulation has been advanced. Widespread predictions of doom followed the banning of DBCP in 1977 in California. None of the predictions came true. Likewise, in 1980, wild predictions of economic harm were made after the herbicide nitrofen was withdrawn from broccoli and cauliflower following the discovery that it could cause birth defects at low doses. These too did not occur.

The California legislature recently funded a "consultation unit" at the Department of Food and Agriculture to comment on the economic effects of proposed pesticide regulations. This report appears to be one of the first products of that program. In our view, this money could be much better spent protecting the health of workers and the public.

The testimony and comments by Professor Alan Schreiber, Shelley Davis, and Michael Johnston have demonstrated that the California report is entitled to no weight in evaluating the impacts of the regulations. In addition to their testimony, we wish to call attention to several further misrepresentations and omissions in the CDFA report.

Further Errors and Omissions in the CDFA Report.

The report states that irrigation workers begin laying pipe in fields as soon as five minutes after preplant herbicides have been applied. Through conversations with irrigators we have found this statement to be true. However, the report does not mention that irrigators continue to smell an odor of pesticides during the entire time spent setting up pipe and that the ground is still damp with spray when they begin laying pipe, a clear violation of existing law which prohibits reentry before the spray has dried.

The report does not identify any measurement of irrigator exposure or health effects from herbicide exposure. Have inhalation exposure studies or soil residue exposure studies been completed to realistically measure potential irrigator exposure to the preplant herbicides pronamide (Kerb), chlorthal dimethyl (Dacthal) or Prometryn? While these three pesticides have low acute toxicity, pronamide and chlorthal

dimethyl show evidence of carcinogenicity and prometryn is a skin sensitizer. The EPA has designated pronamide a possible carcinogen and the California Department of Pesticide Regulation's Toxicological Summary for chlorthal dimethyl indicates that this pesticide causes liver tumors in mice and has not been adequately tested for potential to cause cancer in rats. The label for prometryn indicates that this compound is a skin sensitizer.

The report states that laying pipe in twenty acre field takes a full day. Our conversations with irrigators indicate that this process takes only one or two hours.

It is illogical to state that irrigators need to lay pipe in the field directly after application of prometryn in celery. In California most celery is transplanted rather than direct-seeded and the label for the herbicide Caparol 4L (prometryn) specifies application 2 to 6 weeks after transplanting. The label cautions against applying the herbicide to water-stressed plants but does not indicate a need to irrigate soon after herbicide application. Thus, the transplants can be irrigated and pipe removed prior to application of prometryn.

The report correctly states that the EPA regulations would increase requirements for posting sprayed fields in California as a whole. However, it fails to add that Monterey County (Salinas Valley) has since 1981 routinely required posting of all fields after Category 1 pesticides have been applied. This posting ordinance was adopted in response to an outbreak of field crew poisonings in the Salinas Valley. Since implementation of the posting ordinance, the Salinas Valley remains an area of intensive year-round vegetable production and the incidence of premature-entry field crew poisonings has been reduced.

The report does not acknowledge or assess economic impact of herbicide contamination of groundwater. A breakdown product of the broccoli and cauliflower herbicide chlorthal dimethyl has contaminated over 77 wells in 8 California counties.

EPA's Stated Intention to Allow Early Reentry Work Violates Stated Procedures.

In issuing the Final Rule for the Worker Protection Standard the EPA set forth two formal processes for granting limited exceptions to the prohibition of conducting hand labor tasks before expiration of a restricted entry interval (REI). Under one exemption process, a group of interested persons could petition to the EPA, asking that in a particular industry, crop, or crop practice, an exception should be granted. Under the other formal process a chemical manufacturer could submit field residue dissipation data for review to support shortening of a specific restricted entry interval.

It is thus disturbing that the EPA has publicly stated its intention to grant an exception to the prohibition of irrigation tasks during REIs in general based

apparently on the stated conclusions of the now thoroughly discredited CDFA study.

The Farmworker Justice Fund (FJF) and CRLAF have commented previously to EPA demanding that any petition for exception be narrowly defined (i.e. all irrigation practices should not be allowed to slide in on the coattails of evidence from a few pesticides in a few crops) and include a valid, rigorously documented discussion of projected economic impacts.

EPA has stated that under an early reentry exception irrigators would be treated as pesticide applicators. Certain aspects of irrigation work differ from pesticide application. In months of temperate weather irrigators work very long hours, frequently 12-15 hours per day in multiple fields. Irrigation work is done primarily on foot, carrying pipes of various length and weight. This added physical workload contributes to the risk of heat stress, especially when wearing protective clothing and equipment provides a disincentive to wearing such clothing and equipment and contributes to the tearing of protective garments. While irrigators may not have as extensive contact with foliage as harvest workers, they have considerable contact with contaminated soil and irrigation pipes and in tall or densely planted crops irrigators can not avoid extensive contact with contaminated foliage.

Respectfully submitted,

Ralph Lightstone

Ralph Lightstone
Attorney at Law

Anne Katten

Anne Katten
M.P.H.



SOUTH TEXAS COTTON AND GRAIN ASSOCIATION, INC.

2601 N. AZALEA, #20 / VICTORIA, TEXAS 77901-4118
TELEPHONE: (512) 575-0631 FAX: (512) 572-0980

November 10, 1993

The Honorable Charles W. Stenholm
U.S. House of Representatives
1212 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Stenholm:

South Texas Cotton and Grain Association represents producers in the Coastal Bend, Upper Coast, and Winter Garden regions of Texas. We wish to take this opportunity to comment on the Worker Protection Standard for Agricultural Pesticides as adopted by the Environmental Protection Agency (EPA). Our organization has the following concerns about these standards as they are written:

1. Re-entry levels are being set for the industry without support of justifying scientific data. We feel that these levels should not be set until the scientific community has studied the chemicals in question and set the re-entry levels according to that data. On many of the chemicals, other states have adopted standards that allow workers to re-enter the fields once the chemical has dried on the plant. These types of standards should be considered in order that many farm operations, such as irrigation, will not be interrupted to a degree that the economic viability of the farming operation is placed in jeopardy.
2. Allowances should be made for some incidental contact in the field by field workers. In many instances workers are in the fields doing other operations, such as operating tractors with enclosed cabs, that normally will keep them from contact with exposed surfaces. There are instances where limited contact with exposed surfaces might occur. The effect of the worker maintaining protective equipment while operating a tractor in this manner is prohibitive. These workers should be allowed to exit the field and work on equipment without maintaining full personal protective equipment in case of incidental contact with the exposed areas.

Representing South Texas Agriculture for over 30 Years.

The Honorable Charles W. Stenholm
November 10, 1993

Page 2

3. The Standards should address the conflicts within the EPA concerning the use of Personal Protection Equipment (PPE) with Category I chemicals and the EPA heat stress level guidelines. Within our particular region of the nation, agricultural production and chemical application occur primarily during the hot summer months when temperatures reach high 90 degree levels on a regular basis with accompanying high humidity. Forcing the producer to use two layers of clothing places him or her into a position of being subject to heat exhaustion. Some consideration should be given to reducing the amount of PPE required to a level that maintains the safety of the worker both from the chemicals and from extremely hot weather.

4. Consideration should be given to farm workers who are performing dual activities of which chemical application is a secondary part of the work that is being performed. In these instances the worker is classified as a handler of the chemical and must comply with all restrictions even though he or she may have little or no direct contact with the chemical itself. The laborer, in some instances, may be working in conjunction with a commercial applicator, but must comply with the Worker Protection Standards even though in those instances he has no direct contact with the chemical. We feel these workers should be considered eligible for reduced standards of PPE that might otherwise be required.

5. The Standards should realistically address the use and storage of PPE. In many of the areas that this association represents, the producers have many different farm locations that are not near the actual farm headquarters. These farm locations can be as much as 30 miles from the headquarters. These outlying farms are not equipped with facilities that would allow the storage of PPE or personal clothing. Additionally, many of these remote areas do not have running water and in some cases there is no electricity in close proximity to these farms. In these instances it would place an undue economic burden on the producer to provide the required facilities for the storage of PPE and personal clothing.

6. The requirements for decontamination sites for 30 days after the restricted entry level should be shortened or removed from the standards. In the area that we represent, we have many farms that are very large with individual farms reaching sizes of 800 acres or more. These farms are constantly being treated during the growing season on some portion of the acreage. In some instances there are no areas of the farm with 1/4 mile of the work site that have not been treated with an agricultural chemical of some type. In addition, the size of some of the farms would require that a large number of sites be established to maintain the 1/4 mile standard. Even these sites would not be completely

The Honorable Charles W. Stanholm
November 10, 1993

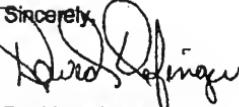
Page 3

out of the contamination site. The Standards should be made to allow the location of decontamination sites to be established at a central and accessible location for all workers at a particular field and the site should be maintained only during the restricted-entry level period or at most for a like time as the REI period.

7. We are concerned that these standards will be applied only to the agricultural use of chemicals. There are many other users of agricultural chemicals that are not related to direct farm production. We feel that if these standards are to be forced upon the agricultural industry, they should be applied just as equally to the non-farm use of these chemicals.

South Texas Cotton and Grain Association appreciates the opportunity to submit these comments concerning the EPA's Worker Protection Standards. The agricultural industry in South Texas is concerned about the health and safety of its workers and is willing to provide a safe working environment for them. We do feel that standards for their safety should reflect the best use of the scientific data available and acknowledge the particular problems that all of the agricultural industry must face in applying these standards in an industry that is not confined to a closed environment.

Sincerely,



David Oefinger

Executive Director

/do



P. O. Box 412 • Keamey, NE 68848-0412 • (308) 236-7058

November 19, 1993

Hearing Docket - Worker Protection Standards

Charles Stenholm, Chairman

Subcommittee on Dept. of Operations and Nutrition

Dear Sir:

On behalf of the Nebraska Independent Crop Consultant Association I would like to submit the following comments regarding the revised Worker Protection Standards (WPS).

Safety procedures around pesticides are a part of the crop consulting profession. Our members all have degrees in some phase of agriculture and know the labels, read the manuals and MSDS information, and are familiar with the LD 50's of products used to help grow crops in Nebraska.

We work directly for our clients - the farmers - and do not sell any agriculture product.

Crucial decisions are made by the crop consultants after a pesticide application to determine whether the pesticide adequately controlled the pest or whether the farmer should retreat an infected field. Rather than complying with all these new regulations concerning re-entry intervals, protective equipment, information training and so forth, farmers may choose not to hire crop consultants simply to avoid the added costs of these regulations. Alternatively, if the farmer continues the service of a crop consultant, the farmer and the consultant may choose to apply a higher rate of pesticides to assure adequate treatment of a field. This "blind approach" to pesticide application could prove to be harmful to the environment because of the potential for over-applying pesticides to avoid WPS regulations.

WPS regulations which would hinder good IPM practices and those that crop advisory firms need an exemption for include:

A quarter mile warning requirement for all field scouts likely to come near a treated field.
170.232(b).

Employer contact required every two hours if an employee is near highly toxic materials. 170.210.
Re-entry to fields restricted for 12-72 hours even for non-toxic and low toxicity pesticides.

156.208(b)(2).

Mandatory wearing of coveralls and rubber gloves for any early entry workers. 170.240(d)(7),
156.212(j)(2).

Employer provided clothing (coveralls, gloves, boots, goggles) 709.240(c) & 38149.
Clothing must be inspected daily for holes. 170.210, 170.240(e)(2).

Clothing must be cleaned before each day of reuse. 170.240(f).

Storage and changing rooms must be provided. 170.240(f)(9).

Water, soap, towels, emergency change of clothes always kept within 1/2 mile of field scouts.
170.250(c).

Employer is responsible if all protective gear not worn or is taken home. 170.240(a)(f)(10).

Employer responsible to prevent heat related illnesses due to wearing of extensive personal protective equipment. 170.240(g) & 38112.

We hope you find these are sound reasons to grant the crop consultants an exemption to the Workers Protection Standards.

Sincerely,



Greg Schneider
President



November 8, 1993

SUBJECT: Review of California Assessment of WPS Impacts

TO: Dan Ford, Litigation and Advocacy Coordinator
Evergreen Legal Services

FROM: Alan Schreiber, Pesticide Coordinator *Alan*
Washington State University

Summary. The report on the economic impacts accruing from the implementation of the Federal Worker Protection Standards in California is based on an economic model using information collected from a small group of potentially impacted growers with additional input from farm advisors. While the economic modeling appears to be methodologically sound, the information on which the model is based is severely flawed. The flaws associated with the information and assumptions used to model the impacts appear to be so problematic that I firmly believe the resultant output has minimal validity. Generally, the assessment's claims of decreased yields and increased costs to consumers are exaggerated. Specific problems associated with the analysis are 1) the information was collected from an apparently non-random group of growers of insufficient size (n=49) to adequately reflect true impacts, 2) the information is based on opinions of growers rather than on recognized experts such as university scientists, 3) no basis or data are provided for virtually all impacts due to implementation of the regulations, 4) the hypothetical scenario of 5% yield reduction appears to be greater than the information provided in the report would suggest and 5) the potential economic benefits accruing from implementation of the regulations, such as decreased health costs and increased farm worker productivity were not considered.

Introduction. The University of California Berkeley and the California Department of Food and Agriculture's assessment of economic impact of federal worker protection standard (WPS) on agriculture production in California, heretofore referred to as "assessment", is an analysis of the consequences of WPS on the use of individual herbicides on four crops in California. The assessment is based on a survey of a relatively small subset of growers, an undescribed set of "industry leaders" and

econometric modeling of the survey results. The four crops selected for review, lettuce, broccoli, cauliflower and celery, would be expected to be among the most severely impacted commodities due to the relatively high levels of pesticide use and the farm workers associated with the production of these crops. Additionally, these crops have a high per acre farmgate value, are widely grown and are mainly produced in California. Impacts on other crops should be significantly less than those reported in the assessment.

Analytical Review. Several aspects of the assessment appear to be relatively accurate, in particular, the discussions of California agricultural practices and the overview of WPS. Additionally, the economic portion of the analysis is straight forward and apparently sound. However, the assessment is not a balanced review of the impact of WPS in California and should be considered as a one sided advocacy report with some serious analytical flaws. The primary reason for these shortcomings appear to be due to the short time available for data collection and subsequent analysis. The lack of adequate time to prepare the report has resulted in an assessment that is not based on data or expert opinion, but rather relies on the opinions of a small group of affected growers and hypothetical scenarios used in econometric models. This review will focus on some of the assessment's shortcomings. Due to the total absence of data and minimal descriptions of methodologies, this review is based on the limited information provided in the assessment.

The most serious problem with the assessment is the apparent total lack of data. I inferred from the narrative that a non-random subset of impacted growers were surveyed with additional opinions solicited from farm advisors. Without some evidence of scientifically based data or valid expert opinion, any model, regardless of methodological rigor, is of questionable value. No justification is provided for the validity of the 49 grower's response or whether their views were similar to non-respondents. The assessment stated that large differences exist in impacts on growers based on size of operation (page 16 of the assessment). No information is provided on whether the size of operation of the 49 respondents was reflective of California vegetable growers.

On page 10, the assessment states "The regulations ... could result in yield losses for growers and higher prices for consumers."; however, no data are provided to support the claim of yield losses. Additionally, the statement that yield losses could occur, also would suggest that they might not occur. No probability of whether yield losses will or will not occur is provided.

On page 11, third paragraph, the assessment makes several claims which include the word "may" and concludes with a sentence starting with "Therefore." Stating a biological effect may or may not occur and then concluding a yield impact will result is questionable logic, especially in the absence of any data or cited studies.

On page 12, an important error in analysis occurs between the first and second complete paragraphs. The authors state that few alternatives exist for control of

weed in lettuce. The only acceptable herbicide for lettuce production is Kerb and the next best alternative is Balan. Growers do not use Balan due to its relatively high cost of application; \$35 per acre more than Kerb. They further state that due to the higher cost of Balan, growers will accept the possibility of lower yields. Apparently, if yield losses did occur they would be less than \$35 per acre. If losses were greater than \$35 per acre, then growers would shift to Balan to avoid yield losses. Losses of \$35 per acre or less would amount to yield reductions worth less than 1%. In the following paragraph, the authors then assume a 1% and 5% reduction in yield for use in the model. Not only is no basis provided for the use of these values, but estimates used in the previous paragraph would appear to dispute the validity of the 5% yield loss value. The 1% and 5% yield loss values are not considered as actual estimates by the authors, but rather as hypothetical values.

On page 14, the authors again use a 5% yield loss scenario for impacts on broccoli and cauliflower with no accompanying data, expert opinion or justification. Therefore, the resulting impacts to growers and consumers must be considered hypothetical scenarios with no apparent scientific basis.

On page 15, the authors again use a 5% yield loss scenario for impacts on celery with no accompanying data, expert opinion or justification. The resulting impacts to growers and consumers, again, must be considered hypothetical scenarios with no apparent scientific basis.

In general the assessment attempts to quantify the economic impact the WPS will have on four of the most vulnerable crops produced in California; however, at the bottom of page 18, the tone of the assessment changes, ending with a somewhat subjective attempt to show an inequity in the impact to growers and the cost of human poisonings from pesticides. After attempting to quantify the number of pesticide applications, the authors estimate the number of application notices that might result from the WPS. The final sentence on page 18 reads "This translates to a considerable cost to growers with an unknown health benefit accruing to workers reading the 100,000 notices." The inclusion of an oblique reference to balancing the benefits against the cost of the regulations in an economic assessment is unjustified and unfounded.

On page 19, paragraph two, the assessment states that large farms will incur considerable costs each day due to time required to issue oral warnings. No data, expert opinion or justification for this statement is provided.

Only impacts unfavorable to imposition of WPS were considered in the economic assessment. The benefits accruing from reduced farm worker poisonings were not considered as part of this economic assessment. If one were to assume the WPS will result in reduced farm worker poisonings, decreased medical costs, reduced worker compensation claims and increased productivity, then these benefits should be incorporated into the economic impacts associated with the regulations.

Conclusion. It is my professional opinion that this economic assessment is a biased attempt to discredit WPS. The consistent claims of biological impacts in the absence of data, cited studies or evidence of expert opinion demonstrates an unbalanced, unscientific approach to the analysis. The information used in the economic model appears to be statistically invalid. The resulting economic impacts to growers and consumers is based on hypothetical scenarios, not sound data. Therefore, I believe no quantitative conclusions can be drawn from this report.



Chemical
Producers &
Distributors
Association

November 9, 1993

The Honorable Charles Stenholm
Chairman, Subcommittee on Department
Operations and Nutrition
Committee on Agriculture
United States House of Representatives
Longworth House Office Building
Washington, DC 20515-6007

Dear Chairman Stenholm:

We at the Chemical Producers and Distributors Association are writing to you about your upcoming hearing on Wednesday, November 10, 1993 on the United States Environmental Protection Agency's Worker Protection Standard. We request that this letter be made part of the official hearing record.

We commend your subcommittee for examining the present progress of the implementation of the Worker Protection Standard (WPS). The regulation represents a comprehensive revision of the protections offered farm workers and agrichemical handlers and is widely supported by industry and the Agency. CPDA additionally applauds the Agency for undertaking such an enormous task. However, because of the sheer breadth of the regulation and various internal delays at EPA, substantial problems in implementing the regulation have occurred.

Our association is primarily concerned about the implementation of the WPS labeling provisions for agricultural-use pesticides. The WPS final rule established ambitious compliance dates for label changes: April 21, 1994 for products sold and distributed, and October 23, 1995 for all products in the channels of trade.

When the final rule was published in August 1992, these deadlines appeared to be reasonable and achievable. Under the original time-frame, pesticide label changes would be made before 1994 production, allowing two full use seasons to move inventory with old labels through the channels of trade.

The lengthy PR Notice 93-7, which informs registrants how to revise products for WPS label changes, was not available, however, until late April of 1993, long after the EPA target date of November 1992. Because of this delay, and the extensive period of time necessary to make correct revisions and receive Agency approval, a

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major part of production for the 1994 season has been manufactured and packaged without the WPS label changes. Recognizing this problem and others, the Agency issued PR Notice 93-11, which provides an expedited process for Agency review of label submissions and alternatives for relabeling and restickering old product.

The alternatives proposed by the Agency in PR Notice 93-11 present workable, although at times expensive, solutions for ensuring that all product sold or distributed by registrants after April 21, 1994 will include the new WPS language. By October 23, 1995, however, our industry must locate all product still in the channels of trade which are not accompanied with the new WPS language on the product. Given the short time period (a year and a half to two years) between production of the product and the final due date, it is not unlikely for a large volume of product not to have the new language on it.

EPA's current solution to this problem is to have non-complying product re-shipped to the manufacturer for new labeling or to allow a re-stickering of the product by the distributor or retailer. Instead of widespread and costly re-stickering of product, CPDA suggests that the Agency allow product to be sold accompanied by a generic supplemental label with the new WPS language on it. This alternative is permissible under PR Notice 93-11 in a limited capacity for the April 21 deadline but does not apply to the October 23, 1995 deadline. Application of the alternative to the October deadline may save industry millions of dollars in re-stickering costs. Moreover, it does not abrogate the intent of the Worker Protection Standard, for it still provides the user or farm worker with updated safety and use information.

The amount of product in the stream of commerce that will be in violation of WPS on October 23, 1995 is not known by industry or EPA. It is a problem that will have to be assessed during the summer of 1995 or after the use season has depleted much of the old inventory. We would like, however, for the subcommittee on Department Operations and Nutrition and EPA to be aware of the impending situation, so that it can be redressed if a large scale problem does arise.

We thank you for your consideration of this issue and look forward to working with you as FIFRA issues are addressed in the future.

Sincerely,

Warren E. Stickle

Warren Stickle
President
Chemical Producers and Distributors Association

STATEMENT OF THE MISSISSIPPI FARM BUREAU FEDERATION
TO THE HOUSE AGRICULTURE SUBCOMMITTEE ON DEPARTMENT
OPERATIONS AND NUTRITION REGARDING
THE ENVIRONMENTAL PROTECTION AGENCY
WORKER PROTECTION STANDARDS FOR AGRICULTURE PESTICIDES

Submitted by
Don Waller
President
Mississippi Farm Bureau Federation

November 24, 1993

My name is Don Waller. I am president of the Mississippi Farm Bureau Federation (MFBF). The Mississippi Farm Bureau Federation is Mississippi's largest general farm organization representing over one hundred eighty-five thousand member families.

Farm Bureau members have voiced strong concerns about the Environmental Protection Agencies (EPA) new 40 CFR Part 170 farm worker pesticide protection standards (57 Federal Register 38102). Some of the concerns are:

- 1) The extensive use of personal protective equipment. Due to extreme heat, personal protective equipment requirements will increase health risks to agricultural employees which may be more severe than chemical exposure itself; i.e., heat exhaustion and heat stroke. Furthermore, the additional reoccurring cost of personal protective equipment places an unreasonable burden on farmers.
- 2) The logistical problems associated with central location posting and decontamination sites. Agricultural production units encompass broad geographical areas. Most employees do not go to a central location each day; therefore, the idea of central location posting increases the employer's liability but does not benefit employees. As far as the decontamination sites are concerned, not only is this an increased expense to farmers but is impossible to comply with as written in the final rule of the worker protection standards.
- 3) The unrealistic length of time and restrictions that restricted entry intervals (REI's) placed on production practices. REI's reduce the farmers ability to produce agricultural commodities efficiently. A reduction in efficiency will result in lower yields, substandard conservation practices, and increased production costs.

These are just some of the immediate problems facing farmers and farm workers as they try to comply with EPA's new worker protection standards.

Realizing that production agriculture is the most hazardous occupation in the United States today, we strongly support a safe working environment for agricultural employees. The majority of deaths and disabling injuries that occur in agriculture are machinery related. Farmers and farm workers have a proven record for handling chemicals safely. For example, last year there were eleven documented poisonings in Mississippi and none of these were the result of mishandling chemicals in production agriculture. According to the Mississippi Cooperative Extension Service, all eleven poisonings were caused by illegal obtainment of chemical products.

The Mississippi Farm Bureau Federation strongly urges EPA to reconsider the new worker protection standards because the final rule will be very expensive, complicated and burdensome to the average farmer. Additionally, many sections of the regulations are impossible to comply with and leave farmers exposed to uninsurable lawsuits and fines.

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